

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF ARIZONA

3 United States of America,)
4 Plaintiff,) CR 15-976-CJK-BGM
5 vs.)
6 Ramon Ramos-Zepeda,) Tucson, Arizona
7 Defendant.) March 7, 2016
9:00 a.m.

8 TRANSCRIPT OF PROCEEDINGS
9 MOTION HEARING - DAY TWO

10 BEFORE THE HONORABLE BRUCE G. MACDONALD
11 UNITED STATES MAGISTRATE JUDGE

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P R O C E E D I N G S

(Call to order of court, 9:00 a.m.)

CLERK: CR 15-976, United States of America versus Ramon Ramos-Zepeda, is scheduled before this court for continued motions hearing.

Counsel, please state your appearances for the record.

MS. FURTADO: Good morning, Your Honor. Kathryn Furtado and Liza Granoff for the United States. Also present is our case agent, Adrian Gomez, who is a Border Patrol agent.

THE COURT: Thank you. And Ms. Granoff as well, good morning, Ms. Granoff. Good morning, Mr. Gomez.

MR. ROCHA: Good morning, Your Honor. Juan Rocha on behalf of Mr. Zepeda, Ramos-Zepeda, who is present and in custody. Sitting with me is my law clerk here at counsel table, Deana Mia.

THE COURT: Thank you. Good morning, Mr. Rocha, and good morning, Ms. Mia.

MS. MIA: Good morning.

THE COURT: And we are continuing, and I think we were going to begin the cross-examination of Agent Borrego, I believe; is that correct?

MR. ROCHA: That's correct.

THE COURT: Okay. And would the agent please come up, please? Why don't you just swear him in? I was going to have you remind him -- remind the agent that he was under oath but

1 go ahead and swear him in again.

2 JORGE BORREGO, GOVERNMENT WITNESS, WAS SWORN.

3 CLERK: Please have a seat.

4 THE COURT: Mr. Rocha, please.

5 CROSS-EXAMINATION

6 BY MR. ROCHA:

7 Q. Good morning, Agent Borrego.

8 A. Good morning.

9 Q. You testified that you've been a Border Patrol agent for
10 eight years?

11 A. Yes, sir.

12 Q. And part of that eight years -- well, prior to you becoming
13 a Border Patrol agent, you received special training to become
14 a Border Patrol agent?

15 A. When I got hired as a Border Patrol agent, yes, I did
16 receive training.

17 Q. And then part of that special training you testified
18 included criminal law and immigration law?

19 A. Yes, sir.

20 Q. That training also required you to also understand the Code
21 of Federal Regulations?

22 A. Yes, sir.

23 Q. So you know what a notice to appear is?

24 A. Yes.

25 Q. You know about expedited removals?

1 A. Yes.

2 Q. You know about administrative removals?

3 A. Yes.

4 Q. You also know about a reinstatement of removal?

5 A. Yes.

6 Q. And you know about ordinary removal proceedings; for
7 example, someone who's already here in the country, they commit
8 an offense, and they're placed into proceedings, you know about
9 that process as well?

10 A. Yes.

11 Q. And you said that you were involved in prosecutions. Now,
12 those prosecutions include criminal and immigration
13 prosecutions? I just wanted to make sure because you said on
14 direct examination that you were involved in prosecutions. I
15 just wanted to verify or clarify. Does that include both
16 criminal and immigration prosecutions?

17 A. Well, there are criminal charges that are immigration
18 charges.

19 Q. So you've been involved with that aspect of cases?

20 A. Yes.

21 Q. Now, just to recap, could you explain to the court what is
22 a notice to appear?

23 A. They get -- they'll -- the paperwork gets generated and
24 they'll go before a judge and they'll present their case to a
25 judge.

1 Q. And in that notice to appear, what's actually on the form?

2 A. I'd have to have the form in front of me.

3 Q. So there's different notices to appear is what you're
4 saying?

5 A. I haven't seen one in a while, it's been a while.

6 Q. Okay. So would you say that a notice to appear is like a
7 charge, you said, is that your testimony? It's like a charge,
8 explaining why they want to remove the person?

9 A. I haven't done an NTA in a while, I'd have to look at the
10 whole file to see.

11 Q. Can you explain to the court what is an expedited removal?

12 A. It's an administrative removal and a person is removed from
13 the US.

14 Q. I just want to verify because you said there's a
15 difference, when I asked you earlier, you know, about expedited
16 removals, you said yes. When I asked you about an
17 administrative removal, you said yes. So you're saying an
18 expedited removal and an administrative removal are the same
19 thing?

20 A. It can be, yes.

21 Q. Is that a yes?

22 A. Yes.

23 Q. So administrative removals and expedited removals are the
24 same thing?

25 A. Yes.

1 Q. Okay.

2 A. It can be, yes.

3 Q. There's no difference between the two? Is there a
4 difference between the two?

5 A. There are other removals that you can do that are not
6 expedited removals.

7 Q. Right. And you mentioned some of them, right, you talked
8 about administrative removals, right?

9 A. Yes.

10 Q. Okay. Could you explain what an --

11 A. Like a voluntary return, there's voluntary returns.

12 Q. I'll ask you about that in a moment but just answer the
13 question.

14 I just want to make sure that we're all clear. Let me
15 recap. So you said that there's a difference -- when I asked
16 you there's different types of removals, you said, yes, there's
17 an expedited removal, there's an administrative removal. But
18 now you're saying that they're actually both the same. So
19 which is it, are they the same or are they different? It's
20 okay --

21 A. For an ER, you can charge criminal charges, but --

22 Q. I'm not asking what the ER's criminal charge is. I'm just
23 asking are the administrative removal the same as an expedited
24 removal? That's all I'm asking.

25 A. I'm not sure.

1 Q. Okay. Now, you mentioned earlier that there's something
2 called a voluntary return, right, you said that?

3 A. Yes.

4 Q. Okay. Now, is that the same thing as a voluntary
5 departure?

6 A. Yes.

7 Q. So voluntary departure and voluntary return are the same
8 thing?

9 A. Yes.

10 Q. Now, there's also something called a voluntary removal,
11 too?

12 A. Okay.

13 Q. I'm asking you, is there?

14 A. Voluntary -- excuse me?

15 Q. A voluntary removal.

16 A. I'm not sure.

17 Q. You're not sure about voluntary removals?

18 A. No.

19 Q. Okay. And as far as a voluntary departure, when can a
20 voluntary departure be granted?

21 MS. GRANOFF: Objection, foundation, Judge.

22 THE COURT: Overruled. If you know.

23 THE WITNESS: What was the question?

24 BY MR. ROCHA:

25 Q. When can a voluntary departure be granted?

1 A. It's upon the discretion of the agency.

2 Q. Certainly it's a discretion, but when can it be granted?
3 What are the qualifications, the criteria for a voluntary
4 departure?

5 A. It can be given to people that -- there's different reasons
6 why they would give a voluntary return.

7 Q. And those would be?

8 A. No criminal history, no -- there's -- there's different
9 reasons why it would be given.

10 Q. So is a voluntary departure given for people who are
11 actually in the United States, they're actually here in the US?
12 Like, who qualifies for a voluntary departure?

13 A. Somebody -- they give it for different reasons, like I just
14 said, and in addition to like maybe a humanitarian reason or
15 something like that.

16 Q. Okay. So can a voluntary departure be given to someone --
17 well, I'll get to that question.

18 Can a voluntary departure, is that given to people who are
19 already in the United States who are in removal proceedings?
20 Is that an option for someone?

21 MS. FURTADO: Objection, Your Honor, lack of
22 foundation.

23 THE COURT: I'm going to overrule it. I mean, to the
24 extent the agent knows, I guess he can answer these questions.

25 THE WITNESS: I don't know. I haven't really dealt

1 with anybody like that.

2 BY MR. ROCHA:

3 Q. Now, you said that you're familiar with immigration law.

4 So you know that there's a section called 212 section, correct?

5 A. Yes, sir.

6 Q. You also know there's a section called 237, correct?

7 A. Yes, sir.

8 Q. What is 212? What is Section 212, what is that about?

9 A. I'd have to refer it to -- I'd have to -- the right
10 verbiage, I would need to look at it.

11 Q. Well, in your own words. You took immigration law, you
12 have special training, and you just told me that there's a
13 difference.

14 What's the difference? What's a 212?

15 A. I'd have to look it up.

16 Q. You don't know? You can say you don't know if you don't
17 know.

18 A. I'd have to look it up.

19 Q. So you don't know?

20 A. No.

21 Q. What's a 237?

22 A. It's the Immigration Nationality Act.

23 Q. What specifically is Section 237?

24 A. I'd have to look it up verbatim.

25 Q. So you don't know. I'm not asking you verbatim, I'm asking

1 you based on your experience, what is Section 237?

2 A. I don't know.

3 Q. Okay. On your direct examination, you testified about
4 admissibility and inadmissibility. Can you explain to the
5 court what is inadmissibility?

6 A. Somebody who is not admissible to the US.

7 Q. Could you please elaborate?

8 A. So, are we talking in general or to this case?

9 Q. I'm asking what is inadmissibility?

10 A. Somebody who has entered without inspection, they crossed
11 illegally --

12 Q. Uh-huh.

13 A. -- within 14 days and within 100 miles, air miles.

14 Q. And then what's admissibility, what is that?

15 A. Somebody who -- who -- so if -- somebody who presents
16 themselves (sic) to the -- through a port of entry or customs and
17 they have claims to be able to be admissible to the US.

18 Q. Okay. Are there any exemptions to someone who's
19 inadmissible?

20 A. Yes.

21 Q. And what are those?

22 A. If they have credible fear or if they have some United
23 States children or somebody who can petition them to have
24 status in the United States.

25 Q. What about victims of domestic violence? Are they an

1 exemption to --

2 A. If that's a credible fear, yes, that would be credible
3 fear.

4 Q. All right. So you're -- so you're familiar with the
5 Violence Against Women Act?

6 MS. FURTADO: Objection, relevance.

7 THE COURT: Why don't you finish the question? Go
8 ahead and finish the question.

9 BY MR. ROCHA:

10 Q. You're familiar with the Violence Against Women Act?

11 THE COURT: Overruled.

12 THE WITNESS: No.

13 BY MR. ROCHA:

14 Q. No? Okay. Now, could you explain to the court what
15 exactly is an arriving alien?

16 A. Somebody who's coming to the US.

17 Q. Where?

18 A. They can be legal or illegal.

19 Q. So they're arriving into the US asking for permission to
20 enter. Is that a fair characterization?

21 A. I'm not sure of the question.

22 Q. Okay. Let me -- what is an arriving alien?

23 A. I'm not sure.

24 Q. Okay. So I guess you won't know the answer to this
25 question. Is an arriving alien eligible for voluntary

1 departure?

2 A. It's possible.

3 Q. Is that a yes, is that a no?

4 A. It's possible, yes.

5 Q. Are you familiar with Immigration Nationality Act
6 Section 240B(a)(4)? No? I can show it to you here.

7 MR. ROCHA: Can I have a moment, Your Honor?

8 THE COURT: Sure.

9 MR. ROCHA: Can I approach the witness, Your Honor?

10 THE COURT: Sure.

11 MR. ROCHA: I'm approaching the witness with the
12 Immigration Nationality Act Section 240B(a)(1), it's titled
13 Voluntary Departure, Certain Conditions and General.

14 MS. FURTADO: Can I see it, Judge?

15 THE COURT: Yeah.

16 MS. FURTADO: Okay. Judge, I object. Can we
17 approach?

18 THE COURT: Sure.

19 (A sidebar conference was held.)

20 THE COURT: You have to make sure you speak into --

21 MS. GRANOFF: Your Honor, we object to this line of
22 questioning. Defense counsel is asking the agent about
23 voluntary departure, which is a form of relief that is eligible
24 to aliens which is granted only by a judge. We believe that
25 this entire line of questioning by defense counsel is being

1 triggered only to confuse the agent since it is clear that he
2 said during his cross-examination that he was not familiar with
3 voluntary departure and so this entire line of questioning, I
4 believe, is completely improper when it's trying to trick the
5 agent to give answers that he's already told the defense that
6 he doesn't know.

7 And so showing him a statute that is relevant only in
8 immigration proceedings, I believe, is unfair, will ask the
9 agent to call for speculation, and is leading him down a path
10 that I think is completely irrelevant since the defendant here
11 is not eligible for voluntary departure since that is a form of
12 relief that can only be granted by an immigration judge.

13 THE COURT: Mr. Rocha?

14 MR. ROCHA: Oh, sure. Your Honor, he testified on
15 direct examination that he wasn't eligible for voluntary
16 departure. He, himself, made that discretionary decision. He
17 never said a judge did, he said that. And he said that he was
18 not eligible for it. The law says that arriving aliens are not
19 eligible for voluntary departure.

20 THE COURT: But he did what he did. I mean, and those
21 are the facts that he's already testified to.

22 MR. ROCHA: Right, he testified to that. Excuse me,
23 Your Honor.

24 THE COURT: No, I'm done.

25 MR. ROCHA: He testified that he was -- my client was

1 not eligible for voluntary departure. He made that decision.
2 He made that discretion. So it's not the judge who makes that
3 decision.

4 THE COURT: Why don't you ask him that? I mean, I
5 agree.

6 MR. ROCHA: He did. Your Honor, he did. And I want
7 to ask him when is someone eligible for voluntary departure,
8 and the law says the only time they're eligible is when they're
9 in removal proceedings. He was not in removal proceedings. So
10 he's obviously wrong about when voluntary departure applies in
11 this case.

12 And he testified that he's -- he studied immigration law,
13 he's been an agent for eight years, he's a processing, he
14 should know the answer to these questions.

15 MS. GRANOFF: Your Honor, I believe that the agent did
16 not say that the defendant was not eligible for voluntary
17 departure. I believe that the agent on direct examination said
18 the defendant was not eligible for voluntary return. A
19 voluntary return are two completely different legal concepts so
20 a -- in a voluntary return, a defendant is before the agency.
21 For voluntary departure, you have to be placed in immigration
22 proceedings before an immigration judge.

23 So when the agent has not said anything regarding voluntary
24 departure and the defense counsel's questions are being meant
25 to confuse them between a voluntary return and voluntary

1 departure I believe is not right.

2 MR. ROCHA: Your Honor --

3 THE COURT: Just stop for a second and then you can
4 make a record. It does -- I mean, he was asked in this
5 particular case: Is the defendant eligible for voluntary
6 return? No, so please go ahead.

7 MR. ROCHA: Sure. So, Your Honor, you can play back
8 the tape. I asked him: Is voluntary return the same as
9 voluntary departure? He explicitly said yes.

10 THE COURT: Okay. I'm going to let you cross -- come
11 on up and make your record. I'm going to let you cross-examine
12 him to some degree on this. But I do think to the extent it's
13 calling for a legal conclusion, he may or may not be qualified
14 for this. And he knows this information and it may have had
15 some impact on the decision he made with regard to
16 Mr. Ramos-Zepeda, I'm going to let you do it but I don't think
17 you necessarily need to show him the statutes. You know, just
18 ask him some questions about what he knows or doesn't know and
19 what he did in this particular case.

20 MR. ROCHA: Okay.

21 THE COURT: Okay? Thank you.

22 (The sidebar conference was concluded.)

23 BY MR. ROCHA:

24 Q. To repeat the question, so is an arriving alien eligible
25 for voluntary departure?

1 MS. GRANOFF: Objection, relevance. The defendant is
2 not an arriving alien, and so this line of questioning is
3 irrelevant with respect to this particular case.

4 THE COURT: I'm going to overrule it.

5 THE WITNESS: What was the question?

6 BY MR. ROCHA:

7 Q. Is an arriving alien eligible for voluntary departure?

8 A. I'm not sure.

9 Q. So would you -- so, so far, I mean, you would agree that
10 immigration law's pretty complicated?

11 A. Yes.

12 Q. So let's talk about some of the forms here you filled out.
13 Now, would you agree that your job as a processing agent
14 requires you to be precise?

15 A. Yes.

16 Q. That's why you took special training, right?

17 A. Yes, sir.

18 Q. 'Cause special training requires you to be precise; is that
19 right?

20 MS. GRANOFF: Objection, asked and answered.

21 THE COURT: Overruled.

22 BY MR. ROCHA:

23 Q. So special training requires you to be precise; is that
24 correct?

25 A. Yes.

1 Q. Would you agree that filling out forms are very important?

2 A. Yes, sir.

3 Q. Because they're used by courts?

4 A. Yes, sir.

5 Q. They're used by the government; is that correct?

6 A. Yes, sir.

7 Q. They're also used by people who are here who are not US
8 citizens to determine immigration eligibility, correct?

9 A. They can be, yes.

10 Q. Now, in this case, you filled out an I-213?

11 A. Yes, sir.

12 Q. And you testified on direct examination that you did all
13 the processing in this case?

14 A. Would I be able to see my transcript?

15 Q. Sure.

16 MR. ROCHA: I'm sorry. May I approach the witness?

17 THE COURT: Of course, that's fine. Thank you.

18 MR. ROCHA: Thank you.

19 I handed the witness a copy of the transcript of his direct
20 testimony.

21 BY MR. ROCHA:

22 Q. So the question is: Were you the person who did all the
23 processing on January 12th, 2009?

24 A. Yes.

25 MR. ROCHA: May I approach the witness?

1 THE COURT: Sure.

2 BY MR. ROCHA:

3 Q. Now, on direct examination, you testified that
4 Mr. Ramos-Zepeda was actually standing in front of you as you
5 were doing the processing, correct?

6 A. Yes.

7 Q. While he was in front of you, you were inputting the
8 answers as well as questioning him during that time; is that
9 correct?

10 A. Yes.

11 Q. And you testified that the information was verbatim,
12 meaning that it was exactly the same that he was giving to you;
13 is that correct?

14 A. What was the question?

15 MR. ROCHA: Your Honor, may I approach the witness?

16 THE COURT: Sure.

17 BY MR. ROCHA:

18 Q. So I'll repeat the question. You testified that you took
19 the information down verbatim; is that correct?

20 A. Yes.

21 Q. Thank you.

22 MR. ROCHA: Your Honor, may I approach again?

23 THE COURT: Yes, thank you.

24 BY MR. ROCHA:

25 Q. I'm going to show you your I-213 in this case.

1 MR. ROCHA: Your Honor, may I approach?

2 THE COURT: Yes.

3 BY MR. ROCHA:

4 Q. Do you have your I-213 in front of you, sir?

5 A. Yes, sir.

6 Q. Okay. So is that the form you filled out?

7 A. Yes.

8 Q. Is that your signature at the bottom?

9 A. Yes, sir.

10 Q. And what day is the report filled out?

11 A. January 12th, 2009.

12 Q. Now, on direct examination, you testified that

13 Mr. Ramos-Zepeda was apprehended at the port of entry near

14 Naco, Arizona, at 8:00 o'clock in the morning.

15 A. No, I did not.

16 Q. You didn't testify to that?

17 A. I did not say he was at the port of entry.

18 Q. No, let me re-ask the question. You testified on direct

19 examination that he was apprehended near the Naco -- near Naco,

20 Arizona?

21 A. Yes.

22 Q. Okay. At 8:00 o'clock in the morning?

23 A. Yes.

24 Q. If I could have you take a look at your report where it's

25 about -- where it's located at entry more or less.

1 Do you see that?

2 MS. FURTADO: I'm sorry. What page are we referring
3 to?

4 MR. ROCHA: It's the first page.

5 MS. FURTADO: Is it Bates stamped 51?

6 BY MR. ROCHA:

7 Q. Agent Borrego, could you tell the government what's the
8 Bates stamp there? It's the bottom.

9 THE COURT: Down at the bottom of the page, just the
10 number.

11 THE WITNESS: I'm not sure. Oh, the number is 56.

12 BY MR. ROCHA:

13 Q. Bates stamp 56.

14 So do you see where it says at or near it says Sahuarita,
15 Arizona?

16 A. Yes.

17 Q. And then you see the date and the hour, you see that?

18 A. Yes, sir.

19 Q. What date does that say?

20 A. January 12th, 2009.

21 Q. And what time is that?

22 A. 0130.

23 Q. So he was actually apprehended at 1:30 in the morning --

24 A. Yes.

25 Q. -- according to your report? I'm sorry, is that a yes?

1 A. Yes.

2 Q. Okay. So he actually was apprehended at 1:30 in the
3 morning, not 8:00 o'clock in the morning; is that correct?

4 MS. FURTADO: Objection, Judge, is defendant -- is the
5 defense impeaching the witness with the statement?

6 THE COURT: Hang on.

7 MS. FURTADO: Because I'm not sure what statement he's
8 referring to in terms of impeaching this witness.

9 THE COURT: Well, I think he's asking him about the
10 report.

11 MS. FURTADO: Well, he said that -- he's asking
12 questions about what he previously testified to. So I'm not
13 understanding at this point if we're impeaching him or if he's
14 talking about the form.

15 THE COURT: I think he's doing both. So I'll
16 overrule. I mean, you can ask him on redirect what time --

17 MS. FURTADO: So if he is impeaching him, Judge, then
18 I would ask that the defense give us the page and line number
19 of the --

20 THE COURT: I don't think he needs to do that.

21 MS. FURTADO: -- statement that he's referring to.

22 THE COURT: I think he can say: You previously
23 testified to X; is that correct? And then move on. I mean, I
24 don't think you necessarily need a page or line of his prior
25 testimony, which you wouldn't have at trial anyway. And you

1 generally wouldn't have unless we continued this hearing, so I
2 think he can ask him the question and then if he's impeaching
3 him, we'll see.

4 MS. FURTADO: Okay.

5 THE COURT: So, Mr. Rocha, why don't you just ask him
6 the question again and then tie it up to the report?

7 MR. ROCHA: Yes, Your Honor.

8 BY MR. ROCHA:

9 Q. So, just to summarize, this is your report that you have in
10 front of you, correct, sir?

11 A. Yes, sir.

12 Q. Okay. You filled out that report on January 12th, 2009,
13 right, sir?

14 A. Yes, sir.

15 Q. Okay. And on the report on direct examination you
16 testified that Mr. Ramos-Zepeda was apprehended at 8:00 o'clock
17 in the morning; is that correct?

18 A. I'd have to look at my --

19 Q. Okay. On the report, however, you note that he was
20 actually arrested at what time? What time does your report
21 say?

22 A. What time he was arrested?

23 Q. Yes.

24 A. That's 0130.

25 Q. That's 1:30 in the morning, right?

1 A. Yes, sir.

2 Q. Okay. Now, I want you to take a look at the bottom left,
3 it's still on the first page, still the first page, on the
4 bottom left. Do you see where it says alien last -- or alien
5 has been advised of communication privileges? Do you see that?

6 A. Yes, sir.

7 Q. What date does that say?

8 A. 1/12/2009.

9 Q. Is that your signature?

10 A. My initials.

11 Q. Those are your initials? Okay. If I can have you turn to,
12 it would be, I believe, page 4 of your report.

13 Do you have that in front of you?

14 A. Yes, sir.

15 Q. Now, you testified on direct examination that Mr. Ramos,
16 because he had no immigration history, was not eligible for any
17 criminal prosecution, correct?

18 A. I'd have to see my testimony.

19 Q. So you don't recall?

20 A. I don't recall the exact question and answer.

21 Q. Okay. On your report -- take a look at your report, take a
22 moment.

23 A. Okay.

24 Q. -- is there anything in there that you read him his Miranda
25 rights, anywhere on your report?

1 A. Repeat the question.

2 Q. Is there anywhere on your report that you read him his
3 Miranda rights?

4 A. No.

5 Q. Okay. And then just go back to the first page of your
6 report. Now, you said that -- who was the examining officer,
7 who reviewed your report?

8 A. Gregory Gibbon.

9 Q. And who is that?

10 A. He's a supervisory agent.

11 Q. Okay.

12 MR. ROCHA: May I approach the witness to retrieve his
13 report?

14 THE COURT: Sure.

15 MR. ROCHA: Your Honor, I want to show the witness
16 here what's been marked as Bates stamp 45, 46, 47, 48, 49, and
17 50. It's an I-213 report.

18 THE COURT: I have that as Bates stamped 56. Am I --
19 that's your Exhibit No. 1?

20 MR. ROCHA: No, Your Honor. This isn't an exhibit
21 that I included in the number of exhibits. If I had to
22 include, this would be No. 60, if I can write this down. It
23 would be -- and I'm not introducing it, of course, as evidence,
24 it's just an exhibit for identification purposes. So it would
25 be No. 60. But it's Bates stamped 45 through 50.

1 THE COURT: Please show it to Ms. Furtado first.

2 MR. ROCHA: Sure.

3 MS. FURTADO: I have a copy, Judge.

4 THE COURT: Okay.

5 MR. ROCHA: May I approach the witness, Your Honor?

6 THE COURT: Yes, you may.

7 BY MR. ROCHA:

8 Q. You have an I-213 there in front of you, right,
9 Agent Borrego?

10 A. Yes, sir.

11 Q. Now, who filled out that I-213?

12 MS. FURTADO: Judge, I know we're in an evidentiary
13 hearing, I know it's a little looser, but this is an I-213 of
14 an agent that is not Borrego. So I think there needs to be a
15 little bit of foundation here, if this agent is even familiar
16 with it, if he knows, you know, the circumstances of when it's
17 written. I'm assuming counsel is going to refresh him or try
18 and refresh his memory using it. But at this point I'm not
19 sure, so --

20 THE COURT: Let me see it. Can I see it? I'm going
21 to -- I'm going to let Mr. Rocha ask a few questions about it.
22 I guess you need to establish whether he's seen it, whether
23 he's relied upon it, is he using it, to what extent he's
24 familiar with it.

25 MR. ROCHA: Sure.

1 BY MR. ROCHA:

2 Q. Okay. So do you have the I-213 there in front of you, sir?

3 A. Yes, sir.

4 Q. Did you fill that I-213 out?

5 A. No.

6 Q. But you are familiar with an I-213, correct?

7 A. Yes.

8 Q. 'Cause you've filled out one before, correct?

9 A. Yes.

10 Q. Is the layout the same?

11 A. Yes.

12 Q. Now, who is the person on that I-213, the alien?

13 A. It's Ramon Ramos-Zepeda.

14 Q. Now, is that the same person that's here in the courtroom,
15 sir?

16 A. Yes, sir.

17 Q. Okay. And what's the date on that I-213?

18 A. When it was created?

19 Q. Yes.

20 A. January 12th, 2009.

21 Q. And what time was it created?

22 A. It says 2:13.

23 Q. But that's not your I-213, correct?

24 A. No.

25 Q. Now, can I direct your attention back to the place on that

1 I-213 on the first page on the right side where it says at
2 entry date and hour, what hour does that say?

3 A. When he was apprehended, is that what you're asking?

4 Q. Yes, sir.

5 A. He was apprehended, it says here, January 13th, 2009.

6 Q. At what time?

7 A. 1500.

8 Q. What time would that be?

9 A. 3:00 p.m.

10 Q. 3:00 p.m., okay. So can I direct your attention again to
11 the first page down to the left side where it talks about alien
12 provided communication privileges?

13 Do you see that?

14 A. Yes.

15 Q. What date does that say?

16 A. 1/15/09.

17 Q. So that's January 15th, 2009?

18 A. Yes.

19 Q. And whose initials are those?

20 A. I don't know.

21 Q. So would you agree that January 15th is three days after
22 January 12th?

23 A. Yes.

24 Q. Now, can I take -- can I have you turn to page 5 of that
25 I-213? Do you have that in front of you?

1 A. Yes.

2 Q. Now, is there a section there that says Miranda violation?

3 A. Somebody advised him of his Miranda rights, yes.

4 Q. And who was that?

5 A. It says I.M. (phonetic). I'm not sure.

6 Q. And the form does say that Mr. Ramos-Zepeda was advised of
7 his Miranda rights, correct? Is that what that says?

8 A. Advised the subject of his Miranda rights, yes.

9 Q. Yes. And that he says that he agreed to make a statement;
10 is that correct?

11 A. He understood his rights and was willing to answer
12 questions at this time.

13 Q. And that was on January 12th, 2009, correct?

14 MS. FURTADO: Objection, Judge, foundation. Again,
15 this agent has no idea.

16 THE WITNESS: I'm not sure.

17 MS. FURTADO: He didn't do any of this work.

18 THE COURT: Overruled. If he can answer the question.
19 I think he just said he didn't know.

20 MR. ROCHA: Okay. Can I retrieve the I-213, Your
21 Honor?

22 THE COURT: Sure.

23 BY MR. ROCHA:

24 Q. I'm sorry. Can I just ask you one more question about
25 that? I just forgot to ask.

1 MR. ROCHA: May I just approach, just one more
2 question on the I-213?

3 THE COURT: Sure.

4 MR. ROCHA: It's a quick question.

5 THE COURT: Okay.

6 BY MR. ROCHA:

7 Q. Sir, who is the examining officer that's written at the
8 bottom of the page?

9 A. It says Jaime Lopez.

10 Q. Okay.

11 MR. ROCHA: May I retrieve the I-213, Your Honor?

12 THE COURT: Yes, thank you.

13 BY MR. ROCHA:

14 Q. Now, on direct examination, you testified that once you
15 completed the processing of Mr. Ramos-Zepeda, you said that you
16 placed him back into the cell; is that correct?

17 A. Yes.

18 Q. So does any -- I'm sorry. So was -- once you were done,
19 you testified that you put him back because there was a warrant
20 from California for Mr. Ramos-Zepeda?

21 A. What was the question?

22 Q. You testified on direct examination that Mr. Ramos-Zepeda
23 had a warrant out of California?

24 A. Yes.

25 Q. Okay. So you placed him back in the cell because he was

1 being held for extradition because of the warrant, in other
2 words?

3 A. Well, he would have to go back in the cell after the
4 paperwork anyway, but he was awaiting extradition.

5 Q. Sure, that's fine. Now, would you agree that based on the
6 information provided to you, the I-213s, would you agree that
7 Mr. Ramos could not have entered the country on January 15th,
8 2009?

9 A. I'm sorry?

10 Q. Based on the I-213s that were provided to you, you would
11 agree that Mr. Ramos-Zepeda did not enter the country on
12 January 15th, 2009?

13 A. No.

14 Q. No, you wouldn't agree or, yes, you would agree?

15 A. He did not enter on the 15th.

16 Q. Okay. He entered on the 12th, right?

17 A. On the 9th, I believe.

18 Q. But he was apprehended on the 12th?

19 A. Yes.

20 Q. Okay. Now, you said that at the beginning of this
21 testimony that you're also familiar with the Code of Federal
22 Regulations; is that correct?

23 A. Yes.

24 Q. So you know about 8 CFR which has to do with aliens and
25 nationality, correct?

1 A. Sorry. What was the question?

2 Q. You're familiar with 8 CFR?

3 A. If there's specific charges, I usually have a book that I
4 refer to.

5 Q. Okay. Great. So if you could follow along in the book
6 I'll provide here to you in a second. Now, as you said, you
7 just got through saying, you use it because there's a process
8 that you're following to assure you get it right, correct?

9 A. I use what?

10 Q. A book. You just said you use a book to make sure based on
11 certain charges.

12 A. Not all the time.

13 Q. Not all the time. But in this -- but you're familiar with
14 the Code of Federal Regulations?

15 A. Yes.

16 Q. Okay. Now, in this case, you testified on direct
17 examination that Mr. Ramos-Zepeda was inadmissible to this
18 country, right?

19 A. Yes.

20 Q. Okay. And then you created a form to process him; is that
21 right?

22 A. Several forms.

23 Q. Now, let me see.

24 MR. ROCHA: Your Honor, I'm going to show
25 Agent Borrego what's already been admitted as Exhibit No. 2.

1 THE COURT: Okay. Thank you.

2 MR. ROCHA: May I approach? Sorry.

3 THE COURT: Yes, yes. What is the title of that form,
4 sir?

5 THE WITNESS: Notice and Order of Expedited Removal.

6 BY MR. ROCHA:

7 Q. What's the number that's associated with that?

8 A. Which number are you --

9 Q. Is that an I-860? What's the number associated with that?
10 What's the form number associated with that?

11 A. Yes, it's the I-860.

12 Q. Okay.

13 MR. ROCHA: Your Honor, may I approach the witness
14 with the CFR here? And I'll give a copy to the government
15 counsel.

16 THE COURT: Thank you. Yes, you may.

17 THE WITNESS: So what are you referring to?

18 BY MR. ROCHA:

19 Q. Sir, you have that in front of you?

20 A. Yes.

21 Q. So is that 8 CFR 235.3 where it says: Determination of
22 inadmissibility - record of proceedings? It would be up
23 probably on the left-hand side of the page.

24 MS. FURTADO: Objection again, Judge, for foundation.
25 I'm not sure -- being familiar with the CFR does not mean that

1 the agent is familiar with this particular code section, that
2 he's ever seen it before, that he's ever read it before. I
3 still have the same continuing objection that I've had in terms
4 of laying foundation for this particular line of questioning.

5 THE COURT: Okay. I'm going to overrule it but I do
6 think you need to lay some foundation as to his knowledge or
7 lack thereof of these particular -- of this particular section.

8 MR. ROCHA: Your Honor, if I may proffer, the agent
9 testified that he is familiar with the CFR.

10 THE COURT: Which are thousands and thousands, if not
11 hundreds of thousands, of pages.

12 MR. ROCHA: Sure.

13 THE COURT: So I think if you're going to question him
14 on this specific section, I think in fairness you need to ask
15 him if he's aware of it, has read it before, has relied on it,
16 relied on it in this particular situation or maybe should have
17 and didn't, however.

18 MR. ROCHA: Okay.

19 BY MR. ROCHA:

20 Q. So you completed the I-860 in this case?

21 A. Yes.

22 Q. And in this case, the I-860 is another way of saying
23 expedited removal?

24 A. The notice and order of expedited removal.

25 Q. Okay. And in an expedited removal there's a process that

1 you have to follow; is that right?

2 A. Yes.

3 Q. And you described what that process is during direct
4 examination, correct?

5 A. Yes.

6 Q. And about five minutes ago you testified that you're
7 familiar with the 8 CFR, correct?

8 A. In general.

9 Q. You're familiar with the 8 CFR, correct?

10 A. Somewhat.

11 Q. Is that a yes, is that a no?

12 A. Yes.

13 THE COURT: I think he answered. I mean, he's
14 familiar with it somewhat.

15 MR. ROCHA: Okay.

16 BY MR. ROCHA:

17 Q. So, in this case, as you testified, there's a process. I
18 believe on direct examination you described what that process
19 is, that you have someone, they take their fingerprints, you
20 take their photograph, and then you ask them questions.

21 That was your testimony, right?

22 A. Yes.

23 Q. Okay. So you can agree that there is a process to
24 expeditiously remove someone from the country?

25 A. Yes.

1 Q. Okay. Now, I'd like to refer you to the section in the CFR
2 that discusses the same process that you did on January 12th,
3 2009, same process.

4 A. Okay.

5 Q. If you look on the second page, about halfway down, it says
6 that the immigration officer -- which you would agree is you,
7 is that right, you're the immigration officer?

8 A. Yes.

9 Q. It says that you have to create a record of facts of a case
10 and the statements, which is what you did, you did that, you
11 did exactly what you were told to do, and you followed that
12 because you created a record of sworn statement, correct?

13 A. Yes.

14 Q. In fact, you created the 867 form which is -- takes all the
15 facts from what Mr. Ramos-Zepeda told you and you memorialized
16 them onto that document, correct? You asked him those
17 questions: Do you have any kids? Do you have any citizen
18 parents?

19 A. That's my statement, yes.

20 Q. Right? Okay. So you did exactly what you were told, so
21 you did that, okay.

22 And then it says on there that you shall record the alien's
23 responses, which is what you did on your 867 form; you
24 testified that on direct examination?

25 A. Yes.

1 Q. Okay. And then you testified on direct examination that
2 you advised him of the charges, right?

3 A. Yes.

4 Q. Okay. And then you also testified, and I recall this
5 clearly, you testified that when government counsel asked you,
6 did you give Mr. Ramos-Zepeda an opportunity to respond to the
7 charges, you testified: I did.

8 Is that right?

9 A. I don't know. Can show me the testimony where it says
10 that?

11 Q. So you don't recall?

12 A. I -- it's been three weeks, I don't remember every detail.

13 MR. ROCHA: May I just have a moment here, Your Honor,
14 so I can --

15 THE COURT: Sure.

16 MR. ROCHA: Your Honor, may I approach the witness?

17 THE COURT: Sure.

18 BY MR. ROCHA:

19 Q. Agent Borrego, you have a copy of the transcript from your
20 testimony two weeks ago?

21 A. Yes.

22 Q. Okay. So in that transcript, you testified that --

23 THE COURT: You may want to give a page and line as
24 long as we have it.

25 MR. ROCHA: I'm sorry.

1 BY MR. ROCHA:

2 Q. Could you please tell the government counsel what page that
3 is at the top? I'm sorry.

4 A. This is page 44 of the direct examination.

5 Q. Okay. Thank you. In that you testified that every time,
6 for example, you make a correction to the form, you have
7 Mr. Ramos-Zepeda initial where you have made those corrections,
8 correct?

9 A. Yes.

10 Q. Okay. And that's also part of your -- that's part of the
11 processing that's involved in this case that you -- that when
12 you make corrections, you give the person, the alien, the
13 opportunity to initial where those corrections were made,
14 correct?

15 A. Those -- you're talking about the initials?

16 Q. Your testimony, you said that you have him initial each
17 page, right?

18 A. Yes.

19 Q. Okay. That's part of the processing that goes with this?

20 A. That's -- every time the page is altered, that's when they
21 initial.

22 Q. Okay. So you don't -- you just have them sign each page
23 just for the sake of signing each page?

24 A. To show that we altered the page.

25 Q. Right. And then you read him those forms, correct, that's

1 your testimony?

2 A. Yes.

3 Q. Okay. So if you could just put your transcript aside and
4 if you could refer back to the book.

5 Now, so far you've followed the process for expedited
6 removals. Now, if I could direct your attention to the
7 sentence, it's almost on the page 469 on the first column where
8 it starts: I-860 Notice and Order of Expedited Removal.

9 Do you see that? It says: The alien shall be given the
10 opportunity to respond.

11 Do you see that?

12 A. Yes.

13 Q. Okay. So do you see where it says: In accordance with
14 paragraph (b)(7) of this section -- do you see that?

15 A. Yes.

16 Q. Okay. So do you see where the comma and then "the" starts,
17 do you see that?

18 A. Comma and "the"?

19 Q. The examining immigration official.

20 A. Yes.

21 Q. Okay. So it says: The examining immigration official
22 shall serve the alien with form I-860 and the alien shall sign
23 the reverse of the form acknowledging receipt.

24 Is that what that says?

25 A. Yes.

1 Q. You have your I-860 there, sir?

2 A. Yes.

3 Q. Is that signed by Mr. Ramos-Zepeda?

4 A. No.

5 Q. Could you take a look at the back? Is it signed on the
6 back?

7 A. No.

8 Q. Now, when was that form filled out?

9 A. January 12th, 2009.

10 Q. And then it says there that there's a -- just to be fair,
11 there's a certificate of service that you say you served the
12 person, correct?

13 A. Yes.

14 Q. What date is that?

15 A. January 12th, 2009.

16 Q. But nowhere on that form is Mr. Ramos-Zepeda's signature on
17 there acknowledging receipt?

18 A. His signature is not on here.

19 Q. So, in other words, you didn't follow the process in that
20 sense?

21 A. He did not sign, no.

22 Q. So you didn't follow the process?

23 A. I did follow the policy with the Border Patrol.

24 Q. Now, are you familiar with when a person seeks to withdraw
25 their application for admission?

1 A. I'm sorry?

2 Q. Are you familiar with the process of withdrawing your
3 application for admission?

4 A. I am not familiar.

5 Q. You're not familiar with that process at all?

6 A. No.

7 Q. No? You've never actually conducted a withdrawal of an
8 application for admission whatsoever?

9 A. No.

10 Q. If I can refer you to -- well, I'll just --

11 MR. ROCHA: Your Honor, may I approach the witness?

12 THE COURT: Sure.

13 MR. ROCHA: Well, can I just have a moment here, Your
14 Honor? I'm sorry.

15 THE COURT: Sure.

16 BY MR. ROCHA:

17 Q. Let me just ask one last time. You're unfamiliar with
18 8 CFR 235.4, withdrawal of application for admission, you're
19 not familiar with that section at all? I can provide you with
20 a copy if you'd like.

21 A. I have not done -- I'm not familiar with that.

22 Q. Okay. You're not familiar, okay.

23 Now, let's talk about your I-296. Could you explain to the
24 court what's an I-296?

25 A. Do you have it available?

1 Q. I do.

2 MR. ROCHA: Your Honor, I'm showing what's already
3 been admitted into evidence as Exhibit No. 3.

4 THE COURT: Okay. You may approach.

5 BY MR. ROCHA:

6 Q. Do you have that in front of you, sir?

7 A. Yes, sir.

8 Q. Now, on direct examination, you testified that Mr. Ramos
9 had been found to be inadmissible to the United States; is that
10 right?

11 A. He was found to be inadmissible.

12 Q. And your exact testimony, I believe, you quoted verbatim
13 there, I believe, was that he was inadmissible under
14 Section 212(a) of the Immigration Act; is that correct? You
15 see that there?

16 A. Yes.

17 Q. And I asked you earlier what is the I-296. Could you --
18 could you explain to the court what that is?

19 A. It's the notice to the alien ordered removed, departure
20 verification.

21 Q. So is this -- this is the deportation order, in other
22 words?

23 A. This --

24 Q. This was the one that you filled out? Is this yours?

25 A. Yes.

1 Q. It has your name on it?

2 A. Yes.

3 Q. What day was it filled out?

4 A. January 12th, 2009.

5 Q. Okay. And what is it?

6 A. This is the notice to the alien that he's been found
7 inadmissible to the United States.

8 Q. Okay. So that means he's going to be removed, correct?

9 Now, I know you didn't fill out the bottom of the form, you
10 already testified to that so I know that. But I'm asking you,
11 what is the significance of this form?

12 A. These are the warnings that are given to the alien and then
13 this bottom part gets filled out and immigration will verify
14 his removal.

15 Q. Okay. So if you could take a look at Exhibit No. 2, which
16 is your notice of order of expedited removal. Do you have that
17 in front of you?

18 A. Yes.

19 Q. It says on there that Mr. Ramos-Zepeda has been found to be
20 inadmissible under 212(a)(7)(A)(i)(1); is that right?

21 A. (7)(A)(i)(I).

22 Q. That's 212, correct?

23 A. Yes.

24 Q. Okay. Now, if you could go back to Exhibit No. 3, your
25 I-296.

1 A. Okay.

2 Q. Now, does that form say that Mr. Ramos-Zepeda has been
3 found to be inadmissible under Section 212?

4 A. Yes.

5 Q. Or Section 237, correct?

6 A. Under the provisions of Section 212 or under the provisions
7 of Section 237.

8 Q. Okay. It doesn't tell you which one it is, it says either
9 this one or that one --

10 A. Yes.

11 Q. -- right? Now, you testified earlier at the beginning of
12 this testimony that there is a difference between 212 and 237.
13 You testified -- you said there was a difference.

14 A. Okay.

15 Q. Is that a yes?

16 A. Yes.

17 MR. ROCHA: Your Honor, may I approach the witness?

18 THE COURT: Sure.

19 MR. ROCHA: I'm referring to the Code of Federal
20 Regulations still under the same section that Mr. Borrego had
21 discussed, 235, so it's just the same section we discussed
22 earlier.

23 BY MR. ROCHA:

24 Q. Do you see No. 3 on page 469, sir?

25 A. Yes.

1 Q. Where it says: Additional charges of inadmissibility? Do
2 you see that?

3 A. Yes.

4 Q. And it says: In the expedited removal proceedings, the
5 service may not charge an alien with additional grounds of
6 inadmissibility.

7 Does it say that?

8 A. Yes.

9 Q. It says: If an alien appears to be inadmissible under
10 other grounds contained in Section 212(a) of the Act, and if
11 the service wishes to pursue such additional grounds of
12 inadmissibility, the alien shall be detained and referred to
13 removal proceedings.

14 Is that what that says?

15 A. Removal hearing.

16 Q. Removal hearing before an immigration judge.

17 Is that what that says?

18 A. Yes.

19 Q. Now, go back to your I-296, Exhibit No. 3.

20 A. Okay.

21 Q. Now, you said that there was two sections there, 212 and
22 237?

23 A. Yes.

24 Q. Okay. So there were additional grounds there based on your
25 report?

1 MS. FURTADO: Judge, I object. That misstates the
2 evidence that the witness has already provided. He read the
3 line and it says "or" not "and".

4 THE COURT: I think the form does say "or" and the box
5 checked is actually under 235(b)(1) or 240 of the Act. So I
6 think it does say "or", either 212 or 237. And then it's more
7 specific in regard to the box that was actually checked for
8 235(b)(1) or 240.

9 BY MR. ROCHA:

10 Q. What is 235, sir? What is that section?

11 A. I don't understand what you're asking.

12 Q. What is the section? You said 235, you filled out those
13 forms, your name is on the paper. What is 235?

14 A. It's a section.

15 Q. What is it though?

16 A. A section of the Immigration Nationality Act.

17 Q. Right. What is it? What specifically does it apply to?
18 It's okay if you don't know. So I'll take that as you don't
19 know the answer?

20 A. Yeah, I don't know what you're asking.

21 Q. Okay. And that would apply the same for 240, you don't
22 know what that is either, do you?

23 A. No.

24 Q. Okay.

25 MR. ROCHA: Your Honor, I'd like to approach

1 Mr. Borrego with what's been marked but not introduced as
2 evidence yet as Exhibit No. 4, Government's Exhibit No. 4.

3 THE COURT: Okay.

4 BY MR. ROCHA:

5 Q. Mr. Borrego, what is that?

6 A. That's the I-296 notice to alien ordered removed, departure
7 verification.

8 Q. And whose name is on that list? What alien's name is on
9 that?

10 A. Ramon Ramos-Zepeda.

11 Q. And who is the agent that actually generated that form?

12 A. It looks like -- I'm not sure 'cause this isn't my report,
13 but it looks like Anthony Rogers.

14 Q. What's the date on the report?

15 A. January 12th, 2009.

16 Q. Is that your signature at the bottom where it says
17 certificate of service?

18 A. No.

19 Q. What's the date on that one?

20 A. The certificate of service -- the date for the document
21 itself? Is that what you're asking?

22 Q. What's the date on the certificate of service? What date
23 does it say on that form? It says: I personally served the
24 original of this notice upon the above-named person on. And
25 what's the date on that?

1 MS. FURTADO: Are we looking at 4?

2 THE WITNESS: Yeah, this is -- I don't see where
3 you're looking at.

4 MR. ROCHA: May I approach, Your Honor?

5 THE COURT: Sure.

6 MR. ROCHA: I'm sorry, Your Honor. I was referring to
7 the incorrect form. I apologize to the government on that.
8 That's my bad.

9 MS. FURTADO: What's the number that we're looking at
10 now?

11 THE COURT: No. 2 I think is what you're looking at,
12 right?

13 MR. ROCHA: Yeah. So, it's been marked as Government
14 No. 4, so I'll come back.

15 BY MR. ROCHA:

16 Q. So if you'd go back to that one, sir, Exhibit No. 4. Yeah.
17 So I apologize; that was my fault.

18 A. Okay.

19 Q. So I apologize for confusing you there. So you have that
20 in front of you, right, Exhibit No. 4, right?

21 A. Yes.

22 Q. And you said it was Anthony Rogers?

23 A. Yes.

24 Q. And at the bottom of the form, what date was the person on
25 that form removed from the country?

1 A. It says January 15th, 2009.

2 Q. Okay.

3 MR. ROCHA: May I retrieve the exhibits, Your Honor?

4 THE COURT: Sure.

5 MR. ROCHA: Your Honor, I'd like to show Mr. Borrego
6 what's been stamped -- Bates stamped No. 12. It's the notice
7 and order of expedited removal.

8 THE COURT: Okay.

9 BY MR. ROCHA:

10 Q. Do you have that in front of you, sir?

11 MR. ROCHA: Your Honor, I would mark that as defense
12 counsel's exhibit No. 61 for identification purposes.

13 THE COURT: And, I'm sorry, what is that again?

14 MR. ROCHA: Notice and order of expedited removal.

15 THE COURT: What is the number at the bottom?

16 MR. ROCHA: 12.

17 THE COURT: So it's form 12?

18 MR. ROCHA: Yeah, it's Bates stamped No. 12.

19 THE COURT: No. What form number, like an I-287, what
20 is it?

21 MR. ROCHA: It's an I-860.

22 THE COURT: Thank you.

23 MR. ROCHA: Form I-860.

24 THE COURT: Thank you. Thank you. Okay.

25

1 BY MR. ROCHA:

2 Q. What day is on that form, sir?

3 A. The --

4 Q. On the top right-hand corner, what's the date on that?

5 A. January 12th, 2009.

6 Q. And whose name is on this report -- on this form, I'm
7 sorry?

8 A. It says Anthony Rogers.

9 Q. And at the bottom of that, the certificate of service, what
10 date is on that?

11 A. January 15th, 2009.

12 Q. Now, it was your testimony during direct examination and
13 during cross-examination that you were the only person
14 processing Mr. Ramos-Zepeda; is that right?

15 A. That I knew of, yes.

16 Q. Right. You said you were the only person, okay.

17 MR. ROCHA: May I retrieve the documents, Your Honor?

18 THE COURT: Yes, let's mark it.

19 So this is Exhibit 61, correct, Beth?

20 CLERK: Yes.

21 THE COURT: Okay. Thank you. Thank you.

22 Thank you, Mr. Rocha.

23 MR. ROCHA: And, Your Honor, I'd actually like to move
24 this exhibit into evidence.

25 THE COURT: Any objection?

1 MS. FURTADO: For the record, Judge, I would say that
2 the foundation hasn't been laid; this particular agent did not
3 create this form. But for purpose of this hearing, to simplify
4 things, I don't object to it.

5 THE COURT: Okay. So we'll go ahead and admit
6 Defendant's Exhibit No. 61. Thank you.

7 MR. ROCHA: May I just have a moment, Your Honor?

8 THE COURT: Sure. Mr. Rocha, would you give us
9 61 then because it's been admitted so I can have a copy? Thank
10 you. Thank you.

11 MR. ROCHA: Okay. Your Honor, I'd like to approach
12 with what's been marked as Government's Exhibit 1. It's
13 already been introduced as evidence.

14 THE COURT: Sure.

15 BY MR. ROCHA:

16 Q. Now, is that -- officer -- Agent Borrego, that's your 867
17 form?

18 A. 867A, yes.

19 Q. Okay. Did you fill that one out?

20 A. Yes.

21 Q. And the date on there is January 12, 2009?

22 A. Yes.

23 Q. Now, on direct examination, you testified that when you
24 process someone, that there is an E-3 and I believe you said
25 that was in some type of a computer?

1 A. It's an online computer based for us, yes.

2 Q. Okay. And you testified that on that computer there are
3 two boxes to click for English and Spanish; is that right? Do
4 you remember that testimony?

5 A. Yes.

6 Q. Okay. And you said that you clicked on the English one and
7 not the Spanish one?

8 A. No.

9 Q. You didn't say that?

10 A. I'll have the person read it in Spanish, if they are able
11 to read and understand it.

12 Q. Read what in Spanish?

13 A. That statement.

14 Q. What statement?

15 A. For the sworn statement, that little synopsis blurb.

16 Q. Okay. But you testified that you didn't click on the
17 Spanish one, you clicked on the English one. That was your
18 testimony. You have your transcripts there.

19 A. Okay.

20 Q. You can turn to, I believe, to page 31. You see it or no?

21 A. No.

22 MR. ROCHA: May I approach, Your Honor?

23 THE COURT: Sure.

24 MR. ROCHA: It was actually page 36. 31 was where he
25 talked about the E-3 computer.

1 BY MR. ROCHA:

2 Q. So see that page 36?

3 A. Yes.

4 Q. Now, you said that you, just to extrapolate here, you
5 testified that you clicked on the English one, not the Spanish
6 one, but you just testified that you would have had him read
7 the Spanish one.

8 So which is it?

9 A. I said -- I said: Right here on the paper it's in English
10 but I would have read it to him in Spanish. So you can click
11 it into English or Spanish.

12 Q. You knew prior to that that he was not an English speaker,
13 correct?

14 A. Yes.

15 Q. And so you said that you actually read him the form?

16 A. I don't remember if he actually read it or if I read it to
17 him.

18 Q. But if you provided it to him in English, he doesn't speak
19 English.

20 A. I didn't provide it to him in English.

21 Q. You just said --

22 A. I did not say that.

23 Q. Okay. What is your testimony?

24 A. What I said is: In the computer there are two boxes to
25 click whether English or Spanish. Right here it's in English.

1 Q. What is "right here"?

2 A. But I would have read it to him in Spanish.

3 Q. We don't know what "right here" is?

4 A. Well, right here on the paper.

5 Q. Okay. The 867? We want to make sure we're talking about
6 the same thing.

7 A. Yes, yes.

8 THE COURT: Exhibit No. 1.

9 BY MR. ROCHA:

10 Q. Okay. So proceed. You were saying?

11 A. I'll ask them first if they're able to read and understand
12 it and if they read and understand it, I'll start my
13 questioning once they're done.

14 Q. Okay. But you didn't click on the Spanish one, so he could
15 not have read that form himself because he doesn't speak
16 English. That was your testimony.

17 A. No, it was not.

18 Q. Okay. So what did you do then?

19 A. I would have either had him read it or I would have read it
20 to him in Spanish.

21 Q. Okay. So let's stop there. You said you would have had
22 him read it. Okay. But you clicked on the English one.

23 A. I don't think you're -- I'm telling you no, I would have
24 read it to him in Spanish or he would have read it in Spanish.

25 Q. Okay. Your testimony, I believe, on direct examination,

1 and then it says right there in front of you that you -- there
2 are two boxes, one's for English and one's for Spanish, and you
3 clicked on the English one.

4 A. I did not say that.

5 Q. What does it say on that?

6 MS. FURTADO: Objection, Your Honor, asked and
7 answered.

8 THE COURT: Yeah. His testimony is that he -- while
9 this form is in English, that he clicked on the Spanish version
10 and would have either read it or had Mr. Ramos-Zepeda read it.

11 Is that your testimony?

12 THE WITNESS: Yes. It's right here in English but I
13 would have clicked the Spanish one.

14 BY MR. ROCHA:

15 Q. But you didn't click the Spanish.

16 THE COURT: Hang on. "Right here" being Exhibit
17 No. 1?

18 THE WITNESS: Yes.

19 THE COURT: Go ahead, please.

20 BY MR. ROCHA:

21 Q. But you didn't click the Spanish one, right?

22 A. Yes, I did.

23 Q. You did, and you had him read it?

24 A. I don't remember if he read it or I read it to him in
25 Spanish.

1 Q. So if I understand the syntax, the order here, you had him
2 read it first and then you generated the form? I just want to
3 make sure I understand the order here of what happened.

4 A. I don't remember if I read it to him or he read it himself.

5 Q. He read it on the computer screen?

6 A. In Spanish. Yes, so we can just turn the computer around
7 and they can read it themselves (sic).

8 Q. But you said you clicked on the English one, not the
9 Spanish one.

10 A. I did not say that.

11 MS. FURTADO: Objection, Your Honor, asked and
12 answered.

13 THE COURT: Hang on, hang on.

14 MS. FURTADO: And it's argumentative.

15 MR. ROCHA: Okay. I withdraw -- I withdraw my
16 question, Your Honor.

17 THE COURT: Hang on. Okay.

18 BY MR. ROCHA:

19 Q. Now, during direct examination, you said that you read the
20 entire form to Mr. Ramos.

21 A. The only thing that gets read, if they don't understand it,
22 is the statement for the 867. Everything else I explain to
23 them.

24 Q. Okay. So you didn't read every single line, every single
25 word on that form to Mr. Ramos?

1 A. Which form are you talking about?

2 Q. 867.

3 A. Yes, I did.

4 Q. You read the whole thing to him line by line, word by word?

5 A. Yes.

6 Q. Now, you testified that you asked him about his parents; is
7 that right?

8 A. Yes.

9 Q. You asked him about his children or if he had any children?

10 A. Yes.

11 Q. But you never asked him whether he had a girlfriend in the
12 US? Did you ask him that question?

13 A. No.

14 Q. Now, you said that you ran a criminal background check on
15 him; is that right?

16 A. Yes.

17 Q. And it came back that he had a prior offense for lewd and
18 lascivious acts with a minor; is that right?

19 A. Yes.

20 Q. Now, did you tell anyone else about that? Did you tell
21 anyone else that he had that conviction or did you keep it to
22 yourself?

23 A. No, I would have to tell the supervisor at that time.

24 Q. Okay. That's the only other person you told, right?

25 A. I don't remember. That was a long time ago.

1 Q. Okay. So you don't remember if you told other people
2 besides your supervisor?

3 A. There's other agents that are in the processing area.

4 Q. There were other people there, too, right?

5 A. I don't -- I don't remember.

6 Q. Would you agree that's pretty sensitive information,
7 wouldn't you agree?

8 A. Yes.

9 Q. Now, you said, despite that, you said that he wasn't
10 eligible for any criminal prosecution, is that right, despite
11 having that offense and having entered the country illegally,
12 he wasn't eligible for criminal prosecution? You testified to
13 that on direct examination.

14 A. At that time, no, he did not.

15 Q. He was not eligible for criminal prosecution?

16 A. We didn't pursue prosecution at that time.

17 Q. Now, you said that you asked him about equities and you
18 said that it's on your I-213 form what you asked him. But did
19 you ask him about equities when you were filling out that
20 I-867?

21 A. No.

22 Q. And just to be clear, you said that he was also for
23 expedited rule because he was apprehended within 14 days and
24 then within 100 aeronautical miles of the US/Mexico border.

25 A. And he entered without inspection.

1 Q. Entered without inspection. And after obtaining this
2 information, did you have -- after you processed the 867, did
3 you have any other contacts with Mr. Ramos-Zepeda?

4 A. After all the forms, is that what you're asking? What are
5 you asking?

6 Q. After you completed all your forms, did you have any other
7 contacts with Mr. Zepeda?

8 A. Not until these proceedings.

9 Q. Not until today?

10 A. No, the last -- when they contacted me that I had to come
11 testify.

12 Q. Okay. So on January 12th, that was the only time you had
13 contact with Mr. Ramos-Zepeda until today or until two weeks
14 ago when we started this process?

15 A. Yes.

16 Q. Okay.

17 MR. ROCHA: Your Honor, I just have one more exhibit
18 to show Agent Borrego.

19 THE COURT: Okay.

20 MR. ROCHA: I'm going to show him what's been marked
21 as Government's Exhibit No. 13. I'm sorry. Let me rephrase
22 that. It's Bates stamped No. 13, and I will, for
23 identification purposes, it will be criminal defense counsel's
24 Exhibit No. 62.

25 THE COURT: And what is it so we can identify it?

1 MR. ROCHA: It's another 867A, it's another one.

2 THE COURT: Show it -- make sure -- and I'm sure
3 Ms. Furtado has it but make sure she sees it.

4 MS. FURTADO: I have a copy. Thank you.

5 THE COURT: Okay. Thank you.

6 MS. FURTADO: Thank you.

7 BY MR. ROCHA:

8 Q. You have that in front of you, sir?

9 A. Yes.

10 Q. Now, what day is on that form? Does it say January 12,
11 2009?

12 A. Yes.

13 Q. And who's the alien on that -- listed on that form?

14 A. The alien --

15 Q. Yeah.

16 A. -- is Ramon Ramos-Zepeda.

17 Q. And does it say that he was apprehended or, I'm sorry,
18 processed at Sonoita, Arizona, Border Patrol station? It's on
19 the first page at the very top.

20 A. Yes.

21 Q. Now, who filled out that form? It says before -- whose
22 name is on that?

23 A. It says Anthony Rogers.

24 Q. Okay. And if you go through the report, does Anthony
25 Rogers' name appear on that throughout the -- throughout this

1 report?

2 A. Yes.

3 Q. Now, would that also include the jurat record of sworn
4 statement?

5 A. Yes.

6 Q. Now, is this the same form that you completed the same day?

7 A. I'm not sure.

8 Q. The one that you just got through testifying to the court
9 about, the one that you filled out?

10 A. What was your question?

11 Q. Is this 867A exactly the same as the one that you
12 completed?

13 A. No, it's got somebody else did this report.

14 Q. Okay. That's the only difference. Okay.

15 MR. ROCHA: Your Honor, I'd like to move into evidence
16 defense counsel's Exhibit No. 62.

17 MS. FURTADO: Again, same objection as before but for
18 purposes of this hearing, I don't object. It was a
19 foundational objection, Judge; he didn't create this.

20 THE COURT: Okay. So we'll go ahead and admit Defense
21 Exhibit No. 62. Oh, I'm sorry, sorry, Beth. Sorry.

22 BY MR. ROCHA:

23 Q. And then just one last question. Who is the -- on page --
24 Bates stamped No. 16, sir, if you look down at the bottom it
25 says witnessed by. Who is the agent that witnessed this?

1 A. For No. 16? Jose Carreon.

2 Q. Okay. And just to -- I want to ask you again just to make
3 sure. You said that on -- well, you said in testimony during
4 direct examination that once you completed the file, that it
5 was sent to -- it was closed away; is that right? I forgot the
6 exact words that you used.

7 A. I don't -- I'm not sure exactly where the file went but I'm
8 assuming it went to the file control office.

9 Q. File control office, that's correct. So did you take it
10 there personally?

11 A. No.

12 Q. Or how does that --

13 A. So I don't remember exactly what happened but when the
14 extraditing agency picks him up, the file goes to the -- it
15 should go to the control office.

16 Q. Okay.

17 A. But I don't know.

18 Q. But you didn't send it there personally, right?

19 A. No.

20 Q. But that's where it goes, that's the process?

21 A. Yes.

22 Q. Okay.

23 MR. ROCHA: Can I retrieve my exhibits, Your Honor?

24 THE COURT: Of course, except for 62 which we will --
25 because that was admitted. I'll take that. Thank you very

1 much. I'm going to go ahead and staple this, Mr. Rocha, is
2 that okay?

3 MR. ROCHA: Yes, Your Honor, that's fine.

4 THE COURT: Thank you.

5 MR. ROCHA: Your Honor, I have no other questions.

6 THE COURT: Okay. Why don't we take about a
7 ten-minute break and then, Ms. Furtado, we'll have the
8 redirect. Thank you.

9 MS. FURTADO: Thank you.

10 THE COURT: So we're going to stand at recess for a
11 few minutes. Thank you.

12 (A break was taken.)

13 CLERK: Judge, we are back on the record in CR 15 case
14 number 976, United States of America versus Ramon Ramos-Zepeda.

15 THE COURT: Okay. Thank you.

16 CLERK: You're welcome.

17 THE COURT: Ms. Furtado, redirect of Agent Borrego?

18 MS. FURTADO: Thank you.

19 REDIRECT EXAMINATION

20 BY MS. FURTADO:

21 Q. Agent Borrego, at some point during cross-examination you
22 were asked to look at an I-213 of Agent Hoyt; is that correct?

23 A. Yes.

24 Q. Okay. I'm going to show you that now and ask you some
25 questions about that.

1 A. Okay.

2 MS. FURTADO: May I approach, please, Your Honor?

3 THE COURT: Sure. Would you identify, please,

4 Ms. Furtado?

5 MS. FURTADO: Yes. These papers are Bates stamped
6 pages 45 through 50.

7 THE COURT: Right. I think that was marked as Exhibit
8 No. 60, I believe?

9 MR. ROCHA: Yes, it was, yes.

10 THE COURT: Thank you.

11 BY MS. FURTADO:

12 Q. So, Agent Borrego, there's been some talk about the dates,
13 so I'd ask you to take a look at page 3, so Bates stamp 47,
14 middle of the page, above the all caps lettering, preparing
15 officer/receiving officer. And I'd ask you to read the
16 paragraph prior to that information and tell us if you can help
17 us out with understanding the dates here.

18 A. It says --

19 Q. Wait and let me ask you a question.

20 A. Sorry.

21 Q. Does page 47 give you some information as to what happened
22 with the dates?

23 A. Yes.

24 Q. Can you tell us?

25 A. It says right here: The preparing officer/receiving

1 officer and preparation dates. Times cannot be changed in
2 ENFORCE, thus the following agents will be signing for the
3 original preparing and receiving officer at the corrected
4 times.

5 Q. Does it go on, then, to give us some information about what
6 the actual date this particular I-213 for Gerald Hoyt was
7 created?

8 A. Yes.

9 Q. What date?

10 A. January 15th, 2009, at 0200 hours.

11 Q. Okay. And who was the preparing officer?

12 A. Anthony Rogers.

13 Q. Okay. Now, I know the bottom of this I-213 says Gerald
14 Hoyt. Do you have any experience with why there would be two
15 different names?

16 A. So it says -- it says that they weren't able to change it
17 so Rogers signed and he put for Hoyt.

18 Q. Okay. Now, do you know the events that happened that led
19 up to Rogers preparing the I-213 on January 15th, 2009? And
20 you can look on pages 46 and 47, the bottom of the page on 46
21 and the top of the page on 47.

22 A. It explains.

23 Q. Do you know -- after reading this, do you now know the
24 events that led up to Rogers preparing this on the 15th?

25 A. Yes.

1 Q. And what were those events?

2 A. The agents have not -- they were unable to locate the
3 original file. The original narrative remains unchanged. An
4 active warrant exists for the subject, Ramos-Zepeda, Ramon, for
5 a probation violation. Extradition was approved by the
6 originating agency and the subject was turned over to the Santa
7 Cruz County Sheriff's Department on January 12th, 2009.

8 The originating -- the originating agency, San Mateo
9 County, California, later denied extradition after review by
10 DDA Morley Pitt. The subject was transferred back into Border
11 Patrol custody on January 14th, 2009, and subsequently sent to
12 the Sonoita station for recreation of the alien file.

13 I, Anthony Rogers, contacted Mary Kaye at the San Mateo
14 County Sheriff's Department records division at 0130 hours on
15 January 15th, 2009. She sent me a fax confirming the
16 declination to extradite the subject. And then in parentheses
17 it has "attached".

18 Q. Now, the information as you're looking through pages 47,
19 48, 49, and 50, in terms of the criminal history, is that
20 information that you -- that you investigated or that you --

21 A. Yes.

22 Q. -- obtained? And are you required to communicate this kind
23 of information in your reporting when you create reports?

24 A. I'm sorry?

25 Q. Are you required to communicate criminal history

1 information in your reports?

2 A. Yes, 'cause he had an outstanding warrant, so I had to
3 contact that agency with the warrant.

4 Q. In your experience, agent, one of the questions -- well,
5 one of the questions that was asked you today was about who you
6 told about the defendant's criminal history, the lewd and
7 lascivious acts with a minor.

8 Is it your practice, agent, that when you have this kind of
9 criminal history, that you would yell it out into your -- into
10 the area where you work?

11 A. No.

12 Q. Would you communicate that kind of information to other
13 potential defendants or people who are being processed for
14 immigration proceedings?

15 A. No.

16 Q. Okay. On the 15th when Anthony Rogers created this report,
17 did he give some information about criminal prosecution or
18 criminal charges? And I would direct you to look at page 47,
19 top of the page, first paragraph.

20 A. What was the question? Sorry.

21 Q. Did Anthony Rogers provide some information in the I-213
22 about criminal charges that were contemplated?

23 A. Yes.

24 Q. What did he -- what information did he provide?

25 A. He contacted the Tucson sector prosecutions unit to ask if

1 it was still possible to prosecute the subject due to his prior
2 convictions. It was confirmed that they were unable to
3 prosecute as the subject was apprehended more than 48 hours
4 ago. The subject was processed for expedited removal, I-860.
5 The new I-860 was issued and signed by acting field operations
6 supervisor David Barker.

7 Q. Now, in your experience, agent, because criminal
8 prosecution was contemplated, would that explain why Miranda
9 rights were given on page -- and documented on page 49?

10 A. Yes.

11 Q. Were you part of any processing of Mr. Ramos-Zepeda on
12 January 15, 2009?

13 A. No.

14 Q. The information that you've described in terms of what
15 Anthony Rogers, Agent Anthony Rogers has provided on page 46
16 and 47 of the -- of Hoyt's I-213, do you have personal
17 knowledge of that?

18 A. No.

19 Q. Do you have personal knowledge of the recreation of any of
20 the forms, specifically the I-860 that was created by Rogers
21 and I think it was shown to you? It's defense Exhibit 62 or
22 63.

23 A. No.

24 Q. It's 63 --

25 CLERK: There is no 63.

1 MS. FURTADO: Oh, 62, then.

2 THE COURT: 62.

3 BY MS. FURTADO:

4 Q. What about the I-867A that was created by Anthony Rogers,
5 do you have any personal information as to the creation of that
6 document?

7 A. No.

8 Q. Let me ask you about a certificate of service. So I'm
9 showing you what's been previously marked and admitted as
10 Government's Exhibit 2. Would you take a look at this, please?
11 Do you recognize that document?

12 A. Yes.

13 Q. Is that a document you created?

14 A. Yes.

15 Q. In what context did you create that document?

16 A. I'm not sure of the question.

17 Q. When did you create that document?

18 A. January 12th, 2009.

19 Q. And was it related to a specific defendant?

20 A. Yes, Ramon Ramos-Zepeda.

21 Q. Is that person seated here in the courtroom today?

22 A. Yes.

23 Q. Now, that particular document, at the bottom of it, there
24 is a certificate of service --

25 A. Yes.

1 Q. -- is that correct?

2 A. Yes.

3 Q. Can you talk to us a little bit about that? Tell us the
4 process that you use as an agent when you complete that section
5 of the form.

6 A. So once that document is printed, I'll put the file
7 together and when this page is available, I'll explain it to
8 the individual.

9 Q. Okay. So let's back up here a second. Available. What
10 does that mean?

11 A. After it's been printed out.

12 Q. All right. So how does it get printed?

13 A. I have to print it from the computer.

14 Q. All right. How does the information get placed into the
15 document so that it can be printed?

16 A. I have to put information in there.

17 Q. All right. In this particular case, the information that
18 is on that Exhibit 2, how did that -- from whom did you get the
19 information to put into that form, the I-860?

20 A. I generated it in the computer.

21 Q. During --

22 A. During the processing of --

23 Q. Which processing?

24 A. Of Ramon Ramos-Zepeda.

25 Q. All right. Now, what's the top part of that form say?

1 A. Notice and order of expedited removal.

2 Q. Okay. And what is the form for?

3 A. It's letting the -- Ramon Ramos-Zepeda, pursuant of the
4 nationality act, that he has been determined inadmissible.

5 Q. Do you tell him that information?

6 A. Yes.

7 Q. And how do you tell him that information?

8 A. In Spanish.

9 Q. And on this particular day -- what day did you tell him
10 this information?

11 A. January 12th, 2009.

12 Q. And on this particular day, what language were you using to
13 explain this to Mr. Ramos-Zepeda?

14 A. Spanish.

15 Q. And on the top part of the form, does it have your name as
16 the name and title of the immigration officer?

17 A. In the middle.

18 Q. Okay. Okay. So the top portion. We'll talk about the top
19 portion of the form, the top half of that form.

20 A. Okay.

21 Q. Is that your name as the immigration officer?

22 A. Yes.

23 Q. And is that your signature?

24 A. Yes.

25 Q. What does that signature signify?

1 A. That I explained this document to him and served him with
2 it.

3 Q. Okay. Did you, at the time that you were explaining this
4 document to him, have any indication that Mr. Ramos-Zepeda did
5 not understand what you were explaining to him?

6 A. No.

7 Q. Now, the bottom half of the form, what is that?

8 A. This is the order of removal.

9 Q. And what does it mean? What does it signify?

10 A. That I served this to the individual, and supervisor
11 approved the document.

12 Q. And because -- what's the title of that second -- the
13 bottom half of that form?

14 A. Order of removal under Section 235(b)(1) of the act.

15 Q. Now, does this -- what does this order now enable you to
16 do?

17 A. Order the -- Ramon Ramos-Zepeda removed.

18 Q. Okay. And so who has to sign that order? Who has signed
19 the order?

20 A. David Barker.

21 Q. And who else?

22 A. And I did also.

23 Q. Okay. And are you required to get your supervisor's
24 signature?

25 A. Yes.

1 Q. As a Border Patrol agent, are you an immigration officer?

2 A. Yes.

3 Q. Now, the certificate of service, the very bottom, the box
4 at the bottom of this --

5 A. Yes.

6 Q. -- what does that portion signify?

7 A. That I served Ramon Ramos-Zepeda with this document.

8 Q. Now, you used the word "served". What does that mean?

9 A. I explained to him the -- that he was inadmissible and the
10 reasons why.

11 Q. Were you having a conversation with Mr. Ramos-Zepeda when
12 you served this on him?

13 A. No, I just -- I just explained this to him.

14 Q. Did he understand what you were explaining to him?

15 A. Yes.

16 Q. And by signing, what does that signify? Is that your
17 signature down on the bottom in the box?

18 A. Yes, that I explained that to him.

19 Q. Now, what does that signature signify?

20 A. That he understood and I explained it to him.

21 Q. Okay. And what is the date?

22 A. January 12th, 2009.

23 Q. Okay. One of the things that we discussed -- that was
24 discussed with you during cross-examination is your knowledge
25 of immigration law. So your previous testimony is that you

1 have received training in immigration law and perhaps

2 immigration criminal charges; is that correct?

3 A. Yes.

4 Q. And were you able to obtain that training when you were in

5 basic training and advanced training?

6 A. Yes.

7 Q. In that training and now in your work, are you able to cite

8 passages out of the CFR?

9 A. I have not done that, no.

10 Q. If I said to you 8 USC 1324, are you familiar with that

11 charge?

12 A. Yes.

13 Q. What is that charge?

14 A. Alien smuggling.

15 Q. If I said 8 USC 1326, are you familiar with that charge?

16 A. Yes.

17 Q. What's the charge?

18 A. Illegal reentry.

19 Q. Are those criminal charges?

20 A. Yes.

21 Q. Is that something that you routinely work on during your

22 work as a Border Patrol agent?

23 A. Yes.

24 Q. When you do processing, how is it done?

25 A. You want -- from start to finish, is that --

1 Q. I guess that's too general of a question. Do you use a
2 tool to complete your processing of an alien?

3 A. Yes.

4 Q. What do you use?

5 A. I use the computer.

6 Q. Okay. Do you have -- while you're doing processing, do you
7 have a CFR like the ones that have been provided to you that
8 you're checking off?

9 A. I don't -- I have one but I don't use it all the time.

10 Q. All right. The system that you use, are forms generated
11 based on answers that you are inputting?

12 A. Yes.

13 Q. If the answers change, would that sometimes impact the
14 forms that might be generated?

15 A. Yeah -- there's -- for every different file that we do,
16 there's different -- there's charges already associated and
17 each file is different, yes.

18 Q. All right. Does your system automatically generate what
19 you have termed an NTA?

20 A. There is a slot for a notice to appear, yes.

21 Q. Okay. Now, when does that -- what is that slot? I guess
22 I'm not understanding that term. What does "slot" mean?

23 A. There's -- so you have your voluntary return, your -- I
24 take that back; it's the full VR. And then --

25 Q. VR, is that a voluntary return?

1 A. Voluntary return.

2 Q. Okay.

3 A. And then you have an expedited removal and a reinstatement
4 of priority of removal and a notice to appear. And you can
5 click on different drop-down boxes, too. And it will have
6 information in there that's already in the computer.

7 Q. Information --

8 A. For that kind of -- type of file.

9 Q. Would that mean -- does that mean information that
10 qualifies a person for that particular section or does that
11 mean information that the alien has given you?

12 A. Based on the information that the alien gives, it'll -- we
13 can do those different types of files.

14 Q. In Mr. Ramos-Zepeda's case, your previous testimony was
15 that he did not qualify for a voluntary return; is that
16 correct?

17 A. Yes.

18 Q. Did the box for NTA or full voluntary removal or return,
19 did that come up?

20 A. I did not select it.

21 Q. And why didn't you select it?

22 A. Because he was -- he was -- he was amenable for expedited
23 removal.

24 Q. What qualified him for an expedited removal?

25 A. He -- he entered without inspection within 14 days and

1 within 100 air miles.

2 Q. Did he -- is there another -- is there another criteria in
3 terms of documents?

4 A. If they have a -- you mean, like a passport or something?
5 If they have a entry documents, yeah, that would change.

6 Q. In this particular -- in Mr. Ramos-Zepeda's case, did he
7 have entry documents?

8 A. No.

9 Q. Now, are there questions that you may ask during the I-213
10 process that would require you to give an NTA or do a voluntary
11 return?

12 A. Yes.

13 Q. What types of questions might result in an NTA?

14 A. Whether they can derive citizenship from their parents,
15 their children, if they have entry documents, if they have some
16 kind of credible fear.

17 Q. All right. So we've already -- you've already stated that
18 there was no entry documents. But you said credible fear. So
19 I'm just going to write this down: credible fear, parents that
20 would allow you to derive citizenship, or children.

21 Is that correct?

22 A. Yes.

23 Q. Now, in Mr. Ramos-Zepeda's case, did he have any credible
24 fear issues that you documented?

25 A. No.

1 Q. Did he have any parents that would permit him to derive
2 citizenship to the United States?

3 A. No.

4 Q. Did he indicate that he had any children that would permit
5 him to derive citizenship to the United States?

6 A. No.

7 Q. Would simply having a girlfriend permit you to derive
8 citizenship to the United States?

9 A. No.

10 Q. Did he give you any information as to a house or an address
11 in the United States?

12 A. No.

13 Q. When an NTA is issued, what's the next step for the alien?

14 A. They'll be given a date to see a judge.

15 Q. At that point, are you, as an immigration officer, involved
16 in that process?

17 A. No.

18 Q. When you did your review of Mr. Ramos-Zepeda's information,
19 did he qualify for a notice of appearance -- notice to appear?

20 A. No.

21 Q. Now, why do you run somebody's criminal history?

22 A. To see what kind of criminal history they have.

23 Q. In this particular instance, did Mr. Ramos-Zepeda -- we've
24 established Mr. Ramos-Zepeda has some criminal history. That
25 criminal history, would that qualify him for a voluntary

1 return?

2 A. No.

3 Q. Now, you've talked about an expedited removal. And you
4 said the person had to be here within 14 days and 100 air
5 miles.

6 What date did Mr. Ramos-Zepeda enter with regard to the
7 expedited removal that you did?

8 A. January 9th, 2009.

9 Q. What date was he apprehended?

10 A. January 12th, 2009.

11 Q. Where did you get the January 9th date?

12 A. This is -- this is some information he would have given us.

13 Q. He who?

14 A. Ramon Ramos-Zepeda.

15 Q. The defendant?

16 A. Yes.

17 Q. And is that information that you would have considered when
18 deciding to go forward on an expedited removal?

19 A. Yes.

20 Q. Now, where was he -- where did he say he entered?

21 A. Near Naco, Arizona.

22 Q. Ultimately where was he apprehended?

23 A. Near Sonoita, Arizona.

24 Q. Was that on the 12th?

25 A. Yes.

1 Q. And is that location within 100 air miles of the border?

2 A. Yes.

3 Q. Would that, then, qualify him for the expedited removal?

4 A. Yes.

5 Q. Now, one of the things we've talked about or you talked
6 with defense counsel is administrative proceedings versus
7 expedited removal. What's an administrative proceeding?

8 A. There's no criminal charges involved.

9 Q. Are there various types of administrative proceedings?

10 A. Yes.

11 Q. What are the various types that you can think of just
12 sitting there off the top of your head?

13 A. Voluntary returns, expedited removals, reinstatement, prior
14 order of removals.

15 Q. So one of the things that defense counsel asked you about
16 is if expedited removal and an administrative removal are all
17 the same thing. Would it be fair to say that an expedited
18 removal is a type of administrative proceeding?

19 A. Yes.

20 Q. Do you know what a voluntary departure is?

21 A. Yes.

22 Q. Is it different than a voluntary return or, excuse me, I'm
23 using the wrong phrase. Excuse me.

24 Is a voluntary departure different than a voluntary
25 removal?

1 A. Yes.

2 Q. Who makes the determination on a voluntary departure, do
3 you know?

4 A. We're able to do that.

5 Q. Okay. In your -- in your experience, then, based on what
6 you knew of Mr. Ramos-Zepeda, would he have qualified for a
7 voluntary departure?

8 A. No.

9 Q. Why -- so I'm going to ask you to look at Government's
10 Exhibit No. 2. You made a determination of inadmissibility for
11 Mr. Ramos-Zepeda. Why was he inadmissible?

12 A. He was inadmissible, he didn't have any valid entry
13 document and he entered the US illegally with the intent to
14 reside in the United States.

15 Q. And how did you come to that decision?

16 A. It was in the sworn statement I took from Mr. Ramon
17 Ramos-Zepeda.

18 Q. And as an immigration officer, are you able to make this
19 determination of inadmissibility?

20 A. Yes.

21 Q. Was your previous testimony that you didn't read Miranda
22 because Mr. Ramos-Zepeda was processed for an immigration -- an
23 administrative violation or administrative proceeding? If you
24 don't know, let me direct you to that page and location. Give
25 me one second.

1 MS. FURTADO: May I approach, Your Honor?

2 THE COURT: Yes.

3 BY MS. FURTADO:

4 Q. I'd ask you to look at page 27. I'd ask you to look at --
5 sorry, page 27. Okay. I have a bunch of pages listed, give me
6 one second. I'm sorry. All right. Page 27, forgive me, page
7 27, lines two through five.

8 A. Okay.

9 Q. So why didn't you read Mr. Ramos-Zepeda a Miranda warning?

10 A. It was an administrative proceeding.

11 Q. Is that different than a criminal proceeding?

12 A. Yes.

13 Q. So I want to go through the documents again that have been
14 admitted. I'll show you what's been admitted as 1 and 3 -- you
15 already have 2 up there -- and I'd ask you to take a look at 1,
16 2, and 3.

17 Do you recognize those documents?

18 A. Yes.

19 Q. Are those documents that are related to your processing of
20 Ramos-Zepeda?

21 A. Yes.

22 Q. What date was the processing done?

23 A. January 12th.

24 Q. Did you complete those with -- while doing your processing
25 for Mr. Ramos-Zepeda?

1 A. Yes.

2 Q. Would you have spoken to Mr. Ramos-Zepeda about those
3 documents?

4 A. Yes.

5 Q. What language did you speak to Mr. Ramos-Zepeda in when
6 reviewing those documents?

7 A. Spanish.

8 Q. And did you review each one of those documents with
9 Mr. Ramos-Zepeda?

10 A. Yes.

11 Q. And did he give you any indication that he did not
12 understand what you were reviewing with him?

13 A. No.

14 Q. Did he give you any indication that he did not understand
15 that you had found him inadmissible and were ordering him
16 removed?

17 A. No.

18 Q. Did he give you any indication that he did not understand
19 why you were taking a record of his statement?

20 A. No.

21 Q. Did he -- did those statements also correspond to some
22 other information that you had while doing the I-213? So I'd
23 ask you to look at Exhibit 1, the I-867. So there are
24 statements that are contained in there; is that correct?

25 A. Yes.

1 Q. When looking at those statements, do those statements also
2 correspond to information you had previously taken during your
3 I-213?

4 A. Yes.

5 Q. Now, the back page, it's Bates stamped 16, but it's the
6 fourth -- the last page of Exhibit 1. There are signatures on
7 that page. Whose signatures exist?

8 A. Ramon Ramos-Zepeda, myself, and James Rowe.

9 Q. What does Ramos-Zepeda's signature signify to you?

10 A. That I read him the statement and the answers were true and
11 correct to the best of his knowledge.

12 Q. And when do you ask him -- do you ask him to sign that
13 form?

14 A. Yes.

15 Q. And when do you ask him to sign that form?

16 A. Once we're completed with the statement.

17 Q. Now, do you sign that form as well?

18 A. Yes.

19 Q. Why do you sign that form?

20 A. That I -- I did the statement.

21 Q. And the witness signature?

22 A. That he witnessed the signing.

23 Q. Okay.

24 THE COURT: I've got that Bates stamped as 77. You
25 said 16.

1 MS. FURTADO: I have multiple copies of a lot of the
2 documents.

3 THE COURT: I think the exhibit is Bates stamped 77.
4 Does -- the last page on that does say 77?

5 THE WITNESS: Yes, sir.

6 THE COURT: Thank you.

7 MS. FURTADO: Thank you for the correction, Your
8 Honor.

9 BY MS. FURTADO:

10 Q. Now, in your process of serving a person with all of these
11 documents, what's your practice? How do you generally do it?

12 A. Once the file's complete, I'll go through page by page.

13 Q. Do people have an opportunity to ask you questions if they
14 don't understand what's happening?

15 A. Yes.

16 Q. In this particular case, did Mr. Ramos-Zepeda, first,
17 indicate that he didn't know what was happening?

18 A. No.

19 Q. Did he indicate that he didn't understand?

20 A. No.

21 MS. FURTADO: Okay. I just need one second, Your
22 Honor.

23 THE COURT: Sure.

24 MS. FURTADO: I don't have any other questions for
25 this witness, Your Honor.

1 THE COURT: Thank you. May this witness be excused?

2 MS. FURTADO: Yes, sir.

3 THE COURT: Mr. Rocha?

4 MR. ROCHA: Yes, Your Honor. I have no recross.

5 THE COURT: Thank you. Thank you very much for your
6 time. You may be excused.

7 Does the government have any additional witnesses?

8 MS. FURTADO: I do, Your Honor.

9 THE COURT: Okay.

10 MS. FURTADO: The government calls Border Patrol Agent
11 Adrian Gomez.

12 THE COURT: Okay. Thank you very much.

13 ADRIAN GOMEZ, GOVERNMENT WITNESS, WAS SWORN.

14 CLERK: Please state your name.

15 THE WITNESS: Border Patrol Agent Adrian Gomez,
16 G-o-m-e-z.

17 CLERK: Thank you.

18 DIRECT EXAMINATION

19 BY MS. FURTADO:

20 Q. Good morning, Agent Gomez. Could you please state --
21 you've already stated your name. Can you tell us how long
22 you've been a Border Patrol agent?

23 A. Just shy of eight years.

24 Q. Does it take special training to become a Border Patrol
25 agent?

1 A. It does.

2 Q. Can you take us through that training, please?

3 A. We attend an academy at the Federal Law Enforcement
4 Training Center in Artesia, New Mexico, for an academy of
5 20 weeks.

6 Q. Okay. What types of things do you learn while you're at
7 the training?

8 A. Criminal law, immigration law, driving techniques, firearm
9 training, defense tactics, applied authorities, which include
10 line watch and different operations of Border Patrol duties.

11 Q. Okay. Once you complete basic training, what other
12 training do you need?

13 A. At the station we have to attend field training unit and a
14 post academy training.

15 Q. Okay. What is the field training unit?

16 A. Field training unit includes -- it's a group training of
17 on-the-job training for line watch operations and area
18 orientation.

19 Q. What's post academy training?

20 A. Post academy training is classroom-based training just to
21 touch up on the stuff you learned at the academy and to test
22 for those subjects.

23 Q. Okay. Were you able to successfully complete your basic
24 field and post academy training?

25 A. I was.

1 Q. Now, as a Border Patrol agent, have you had specialty
2 assignments?

3 A. I have.

4 Q. Can you tell us what they've been?

5 A. I've worked for the intelligence unit at the Sonoita Border
6 Patrol station. I've worked for the ASID unit, which is Alien
7 Smuggling Identification Deterrence unit, for two and a half
8 years, and I currently am assigned to the Tucson sector
9 prosecutions unit, been there for about a year and a half.

10 Q. I have a question that's going to sound very silly but is
11 Sonoita, Arizona, and/or Naco, Arizona, are they here in the
12 District of Arizona?

13 A. They are.

14 Q. Thank you. So you said you have a prosecutions unit.
15 That's a specialty assignment that you had; is that correct?

16 A. It is.

17 Q. Tell us what your assignments are, what you do as a
18 prosecutions agent.

19 A. As a case agent, we review cases that are generated
20 throughout the Border Patrol stations in the Tucson sector and
21 we review cases and we help the agents in the field present the
22 cases to the US Attorney's Office.

23 Q. Do you interface with other Border Patrol agents?

24 A. We do.

25 Q. And in terms of what you would do on a specific case that

1 you were assigned to, what types of information are you
2 gathering, what types of work are you doing? So I guess
3 there's two parts. What type of information are you gathering?

4 A. Information, we're gathering the reports and reviewing the
5 reports for completeness and guidelines that they should be
6 able to meet for the criminal cases I'm presenting.

7 Q. What type of work do you do when you're a case agent?

8 A. Run records, collect evidence, things of that nature.

9 Q. All right. Now, do you review A-files?

10 A. We do.

11 Q. What's an A-file?

12 A. An A-file is an administrative file created for all aliens.

13 Q. Is this a file that's routinely kept?

14 A. Yes.

15 Q. Is the -- are the documents in there generated as a course
16 of doing business as a Border Patrol?

17 A. Yes.

18 Q. And are those documents, depending on what type of
19 proceeding, are those documents consistent across the board for
20 the A-files that you've reviewed?

21 A. I'm sorry. What was the question?

22 Q. It was a long question.

23 Okay. Have you reviewed A-files that have -- multiple
24 A-files that might be for an expedited removal?

25 A. Yes.

1 Q. When you look at those files, are the documents that are
2 contained within that for the expedited removal, are they
3 consistent?

4 A. I would say so.

5 Q. So are you familiar with the I-867A and B, the record of
6 the sworn statement?

7 A. I am.

8 Q. Are you familiar with the I-860, which is the notice and
9 order of expedited removal?

10 A. I am.

11 Q. And are you familiar with the I-296, which is a notice to
12 alien ordered removed departure verification?

13 A. I am.

14 Q. And are these documents that are routinely kept by the
15 Border Patrol when processing an alien for expedited removal?

16 A. Yes.

17 Q. Okay. In this particular case, were you asked to review
18 the documents related to a Ramos-Zepeda, Ramon Ramos-Zepeda?

19 A. I was.

20 Q. Are you the case agent assigned to that particular alien's
21 case?

22 A. I am.

23 Q. Okay. Have you personally met Mr. Ramos-Zepeda?

24 A. No.

25 Q. Okay. Were you able to review his A-file,

1 Mr. Ramos-Zepeda's A-file?

2 A. I was.

3 Q. And in reviewing his A-file, can you tell us, is he facing
4 current charges?

5 A. He is.

6 Q. What are those charges?

7 A. He's facing an illegal reentry charge.

8 Q. Okay. What -- is there immigration history that you've
9 been able to see in that file?

10 A. Yes.

11 Q. What is that immigration history?

12 A. The arrests and the ER or expedited removal in 2009.

13 Q. Okay. Were you able to review the documents for that 2009
14 expedited removal?

15 A. I was.

16 Q. Does that record contain I-867A and B?

17 A. It does.

18 Q. And I-296?

19 A. Yes.

20 Q. And an I-860?

21 A. Yes.

22 Q. All right. Now, as you said before, are those -- well, you
23 might have said this. But are those documents that are
24 routinely kept as part of an expedited removal?

25 A. Yes.

1 Q. All right. Now, are there multiple of those forms that
2 I've said, all those I number forms, are there multiple copies
3 of those forms in the A-file for Mr. Ramos-Zepeda?

4 A. Usually three copies, yes.

5 Q. Okay. In Mr. Ramos-Zepeda's case, are there different
6 agents who've done versions of those I forms?

7 MR. ROCHA: Objection, Your Honor. She's leading the
8 witness.

9 THE COURT: Sustained.

10 BY MS. FURTADO:

11 Q. When you reviewed the A-file for Mr. Ramos-Zepeda, what did
12 you find?

13 A. I found basically two A-files with the same apprehension
14 date from different agents with multiple copies with different
15 preparing officers for the same removal.

16 Q. And based on your training and experience, can you tell us
17 what happened with and why there are multiple A-file -- I mean,
18 multiple documents by multiple agents?

19 A. By just reading the documents, it seemed that he was
20 processed on the date of his apprehension and then transferred
21 over to another agency and then returned to immigration
22 services a couple of days later and recreated an A-file to be
23 able to remove him on the 15th of January.

24 Q. All right. I'm going to ask you to be more specific. I'm
25 going to give you some documents.

1 MS. FURTADO: Judge, I know that we've admitted some
2 defense exhibits.

3 Mind if I use those?

4 MR. ROCHA: I don't think I have them --

5 THE COURT: I've got them. It's Exhibit 60 --

6 MS. FURTADO: Okay. Judge, I guess we'll use these.
7 So I'm going to show the agent pages 45 through 50 and I'll
8 also show him pages 50 through 55.

9 THE COURT: I'm presuming those are all part of
10 Exhibit No. 62; is that correct?

11 MS. FURTADO: 40 through 50 I believe is part of
12 Exhibit 62, Defense 62.

13 THE COURT: Okay. And for the record, the Bates
14 numbers on Exhibit 62, the one that was actually admitted are
15 13, 14, 15, 16.

16 MS. FURTADO: We can use those.

17 THE COURT: So the Bates numbers are a little
18 different. That's okay.

19 MS. FURTADO: How many pages are there in Exhibit 62?

20 THE COURT: I've got one, two, three, four.

21 MS. FURTADO: So that's Exhibit 62.

22 THE COURT: Why don't I just show it to you so you're
23 on the same page, so to speak. That's what we have as
24 Exhibit 62.

25 MS. FURTADO: I'm looking for the I-213 for Gerald

1 Hoyt.

2 CLERK: It's document 60 and it was not admitted.

3 THE COURT: It was not admitted.

4 MS. FURTADO: Okay.

5 BY MS. FURTADO:

6 Q. I'm going to show you pages 45 through 50. I'd ask you to
7 take a look at that.

8 Are you familiar with that document?

9 A. I am.

10 MS. FURTADO: Judge, I think I'm going to admit this
11 document just to avoid some confusion. I'd mark it Exhibit 5.

12 So Exhibit 5, Government's Exhibit 5, pages Bates stamped
13 pages 45 through 50, they are the I-213 of Gerald Hoyt,
14 H-o-y-t.

15 CLERK: Are you marking it and asking for it to be
16 admitted or just marking it?

17 MS. FURTADO: At this point I'm just marking it.

18 CLERK: Okay.

19 BY MS. FURTADO:

20 Q. Agent, I want to ask you some questions about this
21 document. I want to be a little bit more specific. You said
22 you're familiar with this document; is that correct? That's
23 what I heard.

24 A. I am.

25 Q. Okay. Is this a document that you reviewed as part of the

1 A-file?

2 A. I did.

3 Q. And is it a fair and accurate copy of what you have in the
4 A-file?

5 A. Yes.

6 Q. Okay.

7 MS. FURTADO: And now I would move for the admission
8 of Government's 5.

9 THE COURT: Mr. Rocha, any objection?

10 MR. ROCHA: No objection.

11 THE COURT: Okay. So Exhibit No. 5 will be admitted.

12 Thank you.

13 BY MS. FURTADO:

14 Q. So I'd like you to take us back through your narrative.
15 You said that there was processing -- apprehension and then
16 given over to an agency and all of that stuff. So I'd like you
17 to take us through dates, please.

18 What was the date that the defendant was apprehended in
19 2009? Let's be specific.

20 A. January 12th, 2009.

21 MR. ROCHA: Your Honor, may I have a sidebar?

22 THE COURT: Sure.

23 MR. ROCHA: Can I just have a sidebar?

24 THE COURT: Sure.

25 (A sidebar conference was held.)

1 MR. ROCHA: I just wanted to know what's the purpose
2 of this witness, because it seems to me that he's going to talk
3 about chain of custody because it seems there might be a chain
4 of custody here. But that was -- it's not an issue that was
5 briefed before the court. We're just talking about whether he
6 was removed from the country or not. And I believe they're
7 trying to show that the documents are consistent and whatnot.
8 But it seems to me this is going to a different issue than the
9 one we briefed the court. So I wanted to make sure.

10 THE COURT: Okay. The exhibit's been admitted. So, I
11 mean, whatever's in the exhibit, it's been admitted. I mean, I
12 don't know if you intend to walk him through what's in the
13 exhibit; the exhibit's been admitted. I know he didn't
14 complete it. I know either Rogers or Hoyt completed it.

15 MS. FURTADO: For purposes of the record, Judge, I
16 know it's been admitted but I like my witnesses to explain
17 what's happening, the stuff they reviewed in terms of the
18 process. It's a public document.

19 The second issue is I need to admit the verification of
20 removal and I'm going to do it through this agent, which I
21 guess is the last step in the ER. So I can skip over the
22 process where, you know, he explains the dates but I think
23 that -- the reason I think it's important is because there's
24 been so much confusion over the dates, and defense counsel
25 brought out with Borrego that, you know, Borrego's testimony

1 was that no other agent processed him on the 12th, which is
2 correct. No other agent -- oh, so no other agent did process
3 him on the 12th so I want to make that -- make it clear on the
4 record what happened and why what Agent Borrego said is true
5 and nobody else processed him but that there was a separate
6 processing that happened on the 15th.

7 MR. ROCHA: And they could bring the other agent --

8 THE COURT: Rogers or Hoyt.

9 MR. ROCHA: -- Rogers to explain that. So he has no
10 personal knowledge on that. He even started by saying: It
11 seems to me. That's pure speculation of what happened so he
12 can discuss it.

13 Now, I have plans to actually have my client testify and he
14 was actually there. He was the person going through that. So
15 obviously they're free to cross-examine my client and ask him
16 about those questions. He personally has personal knowledge of
17 that situation.

18 But I just feel like the issue of removal, that's the issue
19 for trial. And the issue of chain of custody and whatnot, that
20 also goes to the weight of the evidence at trial. So I just
21 don't think that's an issue that we should discuss 'cause we
22 didn't brief that issue, Your Honor.

23 THE COURT: Well, and with regard to the timing, there
24 may be some confusion. I don't think I'm confused. I think he
25 was apprehended on January 9th or he entered on January 9th,

1 allegedly at 8:00 o'clock, allegedly near Naco. He was
2 apprehended on January 12th at 1:30 a.m. allegedly near
3 Sonoita. They thought he was going to be extradited to
4 California, they denied prosecution, so that's why events of
5 the 14th and the 15th occurred.

6 It's my understanding that maybe Borrego didn't know that
7 necessarily because -- why it was reprocessed but I don't think
8 there's much confusion about that.

9 MS. FURTADO: Okay. The 14th and the 15th, then,
10 Judge, is also something that we're not talking about?

11 THE COURT: That was my understanding as well.

12 MS. FURTADO: So I think that --

13 MS. GRANOFF: At this point, Your Honor, it's not a
14 chain of custody issue because chain of custody deals really
15 with admissibility of physical evidence as opposed to
16 documents. It's just a matter of making clear that the actual
17 physical removal document will be the one that was filled out
18 based on the processing on the 15th.

19 THE COURT: 15th.

20 MS. GRANOFF: And so all Agent Gomez is here for is
21 just to sort of take off where Borrego left off in terms of the
22 executed removal because that is the basis of the prosecution.

23 THE COURT: Right. And Mr. Rocha cross-examined
24 Agent Borrego on that document on the verification, so I'm
25 going to let you get into this a little bit but, I mean, to

1 some degree, he is just reading what's in the document. I know
2 you're trying to clear up the dates.

3 MS. FURTADO: I agree, Judge. So did Borrego. I
4 mean, Borrego got to testify to Hoyt's document. He just read
5 out of it as well both by defense and us as well.

6 THE COURT: Right, it's the same document.

7 MS. FURTADO: Yeah, it's the same document. So I'm
8 not trying to get all of that in. I mean, true, it's been
9 admitted and I agree that it's not -- we're not here to do
10 chain of custody but I do need to have the verification of the
11 envoy (phonetic) admitted at this point because I think that's
12 important for the ER that that process be completed and
13 finalized. And, unfortunately, because of the chain of events,
14 because Borrego wasn't the person to ultimately -- his form
15 wasn't used to do the verification of removal.

16 THE COURT: Correct.

17 MS. FURTADO: Because of the intervening event.

18 THE COURT: Right.

19 MS. FURTADO: I do think we need to have Gomez testify
20 to that fact sequence.

21 MR. ROCHA: Just to make a record, we're not disputing
22 that he was removed. That would be an issue for trial. If the
23 agent -- you know, if that's how that comes in. So we're not
24 disputing he was removed. I mean --

25 MS. FURTADO: You can stipulate to No. 4, then.

1 THE COURT: Well, we'll let whatever you need. If
2 that exhibit needs to come in and there's no objection, I think
3 that deals with it.

4 But it's my understanding -- let me just make sure. It's
5 my understanding that with regard to the statements, you're not
6 going to -- the statements of January 14th and 15th are not at
7 issue and the statement of May 2nd, 2015, is not at issue,
8 correct?

9 MS. FURTADO: There is something on the motion to
10 suppress about the January 2nd statement that --

11 MR. ROCHA: From 2015?

12 MS. FURTADO: Right. Oh, I'm sorry.

13 THE COURT: Yeah, that's the May 2nd. I mean, that
14 was May 2nd, I thought.

15 MR. ROCHA: No, it was -- I thought it was January.

16 THE COURT: Anyway, it doesn't matter. Let me just
17 make sure. With regard to, talking about 2015, is the second
18 statement at issue or not? It's my understanding it's just the
19 first statement.

20 MS. FURTADO: It's just the first statement.

21 THE COURT: And I believe it's May 1st. I may have my
22 dates wrong.

23 MR. ROCHA: Yeah, okay.

24 MS. FURTADO: Yeah.

25 THE COURT: Okay. Well, we'll let you -- to some

1 degree, it's in evidence. If Mr. Rocha is going to stipulate
2 to Exhibit No. 4, which I think closes the door on that issue
3 for you, I think, and I know it's not an issue necessarily for
4 this proceeding but it does sort of finalize the events.

5 MR. ROCHA: That's fine.

6 THE COURT: Is that okay?

7 MR. ROCHA: No, that's fine.

8 MS. FURTADO: No.

9 MS. GRANOFF: Thank you.

10 (The sidebar conference was concluded.)

11 MS. FURTADO: So, Your Honor, based on what I've
12 discussed at sidebar, I believe that the defense and the
13 government have entered a stipulation for the admission of
14 Government's Exhibit No. 4.

15 THE COURT: Mr. Rocha, it's my understanding you have
16 no objection?

17 MR. ROCHA: I have no objection.

18 THE COURT: Okay. So we'll go ahead and admit the
19 Government's Exhibit 4.

20 BY MS. FURTADO:

21 Q. So, agent, I know we've discussed and we've heard a lot
22 about the intervening events of January 14th and 15th.

23 Government's Exhibit No. 4, was that signed by a Border Patrol
24 agent?

25 A. It was.

1 Q. Who was that?

2 A. Anthony Rogers.

3 Q. And is he the agent that reconducted the expedited removal
4 on January 14th and 15th?

5 A. It was.

6 Q. Okay. What type of conviction is Mr. Ramos-Zepeda's
7 conviction?

8 A. His -- from his criminal record?

9 Q. Yes.

10 A. Sex with a minor.

11 Q. Okay. Is there a category of conviction? Is that a type
12 of conviction, category conviction for you as a Border Patrol
13 agent?

14 A. Felony, you mean?

15 Q. Would that 2005 conviction for lewd and lascivious conduct,
16 would that qualify as an aggravated conviction for
17 administrative purposes?

18 MR. ROCHA: Objection, Your Honor. That's a legal
19 conclusion whether the conviction is an aggravated felony.

20 THE COURT: I'm going to sustain that.

21 MS. FURTADO: I don't have any other questions for
22 this witness, Your Honor.

23 THE COURT: Okay. Thank you.

24 Mr. Rocha?

25 MR. ROCHA: I have no questions for this witness.

1 THE COURT: Okay. Thank you.

2 Agent Gomez, thank you very much for your time. You're the
3 government's representative so you're welcome to stay in the
4 courtroom, so --

5 MS. FURTADO: I'm really sorry, Judge, I do have
6 another question.

7 THE COURT: That's okay. That's okay. No need to
8 apologize.

9 Agent Gomez, why don't you come up? I think they have one
10 more question for you. And obviously you're still under oath.
11 Thank you.

12 BY MS. FURTADO:

13 Q. Agent Gomez, I have some questions related to some
14 cross-examination that was asked of Borrego. Are you --

15 MR. ROCHA: Objection, Your Honor. How is this
16 relevant?

17 THE COURT: Why don't you ask the question? Let her
18 ask the question.

19 BY MS. FURTADO:

20 Q. Do you have any familiarity with what a voluntary departure
21 is? Do you have training and experience on a voluntary
22 departure?

23 A. I do.

24 Q. Do you have training and experience on a voluntary removal?

25 A. I do.

1 Q. Are they the same?

2 A. It is in the fact that it's voluntary but it's not issued
3 by the same official.

4 Q. Okay. Can you explain, then, how are those issued?

5 A. In my knowledge, voluntary return or removal is -- can be
6 granted by an immigration official or, say, a Border Patrol
7 agent in my case. Or a voluntary departure would be done by an
8 immigration judge, if I'm not mistaken.

9 Q. What's the process for an alien to be taken before an
10 immigration judge?

11 A. Well, it could be several things but if -- in our case, if
12 we apprehend somebody and they are claiming, for instance,
13 credible fear or there's any equity or anything that might make
14 them admissible to the United States, he would go in front of
15 an immigration judge.

16 Q. Is there a form that you -- that gets generated in order
17 for a person to go before an immigration judge?

18 MR. ROCHA: Your Honor, I still ask --

19 THE COURT: Go ahead.

20 MR. ROCHA: My objection, it's just -- this seems
21 cumulative. This was already asked of Agent Borrego. So I'm
22 not sure how his testimony -- he wasn't there the day that he
23 was processed so I'm not sure how he has any personal knowledge
24 of what happened that day.

25 THE COURT: And, Ms. Furtado, I don't know exactly

1 where you're going, but it's my understanding in terms of the
2 criminal history, at least the significance maybe for these
3 proceedings is that it did not qualify Mr. Ramos-Zepeda for an
4 expedited removal. I don't know if that's where you're going.

5 MS. FURTADO: No. I just need to clear up the
6 difference between a voluntary removal and a voluntary
7 departure. They are different, Judge, and I wanted to have the
8 agent explain if there is a voluntary departure, what a Border
9 Patrol agent would issue in terms of the forms.

10 THE COURT: Then why don't -- and I think there's, to
11 some degree, this has been asked and answered of the other
12 witnesses, but what we'd ask, why don't you just answer that
13 question.

14 What's your understanding of the difference between a
15 voluntary removal and a voluntary departure and how do they
16 differ?

17 Is that okay?

18 MS. FURTADO: I think he did answer that question,
19 Judge, he said from my --

20 THE COURT: Let him answer that. And then --

21 MS. FURTADO: Go okay.

22 THE COURT: Go ahead and answer that.

23 THE WITNESS: The difference is, from my understanding
24 and knowledge, would be that a voluntary departure would be
25 something that has to be granted from an immigration judge.

1 THE COURT: Okay. Then go ahead, Ms. Furtado. I'll
2 let you follow up on that.

3 BY MS. FURTADO:

4 Q. In order for an alien to go see an immigration judge,
5 what's the form that needs to be generated?

6 A. The file for that would be a notice to appear.

7 Q. Okay.

8 MS. FURTADO: I don't have any other questions.

9 THE COURT: Okay.

10 Mr. Rocha, I don't know if that gave rise to any questions.

11 MR. ROCHA: I have no questions.

12 THE COURT: Okay. Thank you very much. You may step
13 down. Thank you for your time, Agent Gomez.

14 You know, I really apologize. We're not going to finish
15 today and I still have things this afternoon. We can finish
16 next Monday. I'm on Streamline in the afternoon, but if we
17 start at 9:00, do you think three hours will be enough time to
18 complete this? And I guess it depends upon your schedules
19 also. So let me start -- I'll start with --

20 MS. GRANOFF: If you can just give me a minute to pull
21 up my calendar for next week.

22 THE COURT: Please.

23 MR. ROCHA: Your Honor, I'm not available. I'll be in
24 the Western District of Texas.

25 THE COURT: Okay. Why don't you look at your

1 calendar, Mr. Rocha.

2 MR. ROCHA: I am available Tuesday, a week from
3 tomorrow, if the court has --

4 THE COURT: We're going to have to just make it
5 available, I think. Let me see, 'cause I'd really like to
6 finish.

7 MR. ROCHA: And I'm also available the rest of this
8 week if Your Honor --

9 THE COURT: Well, let me see. And, once again, I'm
10 not -- this is not -- how long -- I know that there's still
11 some more testimony and Ms. Furtado and --

12 MS. FURTADO: The government rests, Judge.

13 THE COURT: Okay. And so -- thank you. Anticipated
14 my question.

15 So, Mr. Rocha, it's my understanding you're going to have
16 your client testify?

17 MR. ROCHA: Yes.

18 THE COURT: And then do you have any other witnesses?

19 MR. ROCHA: Just him.

20 THE COURT: So we'll probably -- I mean, if we
21 schedule a couple of hours, that should be enough. I don't
22 want to rush anyone.

23 MR. ROCHA: Oh, no, I think two hours is enough. And
24 that's my --

25 THE COURT: Let me check something. Let me ask the

1 marshals. Clarabell, if we went from 2:45, I guess, to
2 5:00-ish tomorrow, is that going to give you enough time to get
3 Mr. Ramos-Zepeda?

4 MARSHAL: Yes, sir.

5 THE COURT: How about, Mr. Rocha, does that work for
6 you?

7 MR. ROCHA: That's fine, Your Honor.

8 THE COURT: Ms. Furtado?

9 MS. FURTADO: Yes, Your Honor.

10 THE COURT: Okay. So why don't we do this, why don't
11 we reconvene then and we will begin again tomorrow at 2:45 and
12 we'll just finish.

13 MR. ROCHA: Yes.

14 THE COURT: And then, Beth, is there something else?
15 Yeah, why don't we -- we have a change of plea at 2:30 but it's
16 with a Mixteco interpreter; that may take a little longer. Why
17 don't we say 3:00 o'clock? And it sounds like if we intend to
18 go to 5:00 o'clock, once again, I don't want to rush you in any
19 way, but that should give you enough time.

20 MR. ROCHA: Yes.

21 THE COURT: Okay. So we'll then -- we're going to --
22 we'll stand at recess. We'll reconvene tomorrow at
23 3:00 o'clock and we'll finish, and I really appreciate your
24 working with us.

25 And for the record now, we have admitted for exhibits 1 --

1 Government's 1, 2, 3, 4, and 5. And the defendant's exhibits
2 we have admitted 61 and 62. So thank you very much. I
3 appreciate your time. And I'll see you tomorrow at 3:00
4 o'clock.

5 MR. ROCHA: Thank you, Your Honor.

6 MS. FURTADO: Thank you, Your Honor.

7 MS. GRANOFF: Thank you.

8 THE COURT: Thank you.

9 (Whereupon, the matter was concluded at 11:56 a.m.)
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C E R T I F I C A T E

I, Cindy J. Shearman, court-approved transcriber,
certify that the foregoing is a correct transcript from the
official digital sound recording of the proceedings in the
above-entitled matter.

s/Cindy J. Shearman
Cindy J. Shearman, RDR, CRR

March 18, 2016